

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 91-127; RM-7346, RM-7375, RM-7445, RM-7711]

Radio Broadcasting Services; Richmond Hill, GA, Estill, Blackville, Branchville and Walterboro, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Thoroughbred Communications, Inc., (formerly Richmond Hill Broadcasting), substitutes Channel 287C3 for Channel 287A at Richmond Hill, Georgia, and modifies Station WRHQ(FM)'s construction permit to specify operation on the higher class channel. At the request of Eutaw Broadcast Associates, Channel 286A is allotted to Branchville, South Carolina, as the community's first local FM service. Channel 229A is substituted for Channel 287A at Walterboro, South Carolina, and Station WONO's construction permit is modified to specify the alternate Class A channel. At the request of Williams Communications, the proposal to allot Channel 250C3 to Estill, South Carolina, and substitute Channel 239A for unoccupied but applied for Channel 250A at Blackville, South Carolina, is dismissed. At the request of Toni T. Rinehart, the proposal to allot Channel 229A to Edisto Beach, South Carolina, is dismissed. See 56 FR 19968, May 1, 1991, and **SUPPLEMENTARY INFORMATION**, *infra*. With this action, this proceeding is terminated.

DATES: Effective August 3, 1992. The application filing window for Channel 286A at Branchville, South Carolina, will open on August 4, 1992, and close on September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's First Report and Order, MM Docket No. 91-127, adopted May 28, 1992, and released June 19, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 287C3 can be allotted to Richmond Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.3 kilometers (12 miles) northeast to avoid short-spacings to the allotment and construction permit coordinates for Station WHVL, Hinesville, Georgia, to two pending applications for Channel 287A at Fernandina Beach, Florida, and to Station WIFO-FM, Jesup, Georgia, at coordinates North Latitude 31-59-42 and West Longitude 81-06-40. Channel 286A can be allotted to Branchville without the imposition of a site restriction, at coordinates 33-15-06; 80-49-00. Channel 229A can be allotted to Walterboro with a site restriction of 10.2 kilometers (6.3 miles) east, at coordinates 32-55-00; 80-33-00.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 287A and adding Channel 287C3 at Richmond Hill.

§ 73.202 [Amended]

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Branchville, Channel 286A, and by removing Channel 287A and adding Channel 229A at Walterboro.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 92-14861 Filed 6-23-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-55; RM-7939]

Radio Broadcasting Services; Quincy, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 262C3 for Channel 262A at Quincy, California, and modifies the construction permit for Station KSPY (FM) to specify operation on the higher powered channel, as requested by John K. LaRue. See 57 Fed. Reg. 10749, March

30, 1992. Coordinates for Channel 262C3 at Quincy are 40-02-41 and 120-53-04. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-55, adopted June 3, 1992, and released June 19, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, N.W., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 262A and adding Channel 262C3 to Quincy.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division,
Mass Media Bureau.

[FR Doc. 92-14862 Filed 6-23-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-547; RM-6899; RM-7021; RM-7100; RM-7102]

Radio Broadcasting Services; Hannahs Mill and Milledgeville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition for reconsideration filed by Radio Georgia, Inc. of that portion of the Report and Order in this proceeding which made an allotment of Channel 266A to Hannahs Mill, Georgia. See 56 FR 30510, July 3, 1991. We will delete Channel 266A from Hannahs Mill, Georgia, after determining on reconsideration that Hannahs Mill is not a community for allotment purposes.

With this action, the proceeding is terminated.

EFFECTIVE DATE: August 3, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 634-5430.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-547, adopted June 4, 1992, and released June 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 266A, Hannahs Mill.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-14869 Filed 6-23-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 212

[FRA Docket No. RSSP-3, Notice No. 4]

RIN 2130-AA65

Revision of State Safety Participation Regulations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the FRA regulations on State participation in railroad safety inspections and investigations with respect to the transportation of hazardous materials. The revisions are necessary to implement the expanded authority contained in the Hazardous Materials Transportation Uniform Safety Act of

1990 (HMTUSA). The objective of these revisions is to expand the existing program to include State hazardous materials inspectors.

EFFECTIVE DATE: This regulation will become effective on July 24, 1992.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone: (202) 366-0510. Arnold Gross, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone: (202) 366-0536. Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590. Telephone: (202) 366-0635 or (202) 366-0443.

SUPPLEMENTARY INFORMATION:

Background

Section 206 of the Federal Railroad Safety Act of 1970 (Safety Act), 45 U.S.C. 435, provides for a state role in investigation and surveillance activities with respect to safety regulations issued by FRA. Regulations implementing section 206 of the Safety Act, referred to as the State Participation Program, were published on December 18, 1973 (38 FR 34748), amended on November 28, 1974 (40 FR 55508) and now are found at 49 CFR part 212. The 1970 Safety Act, however, initially did not permit state participation with respect to the older Federal railroad safety laws, such as the Safety Appliance Acts (45 U.S.C. 1-16), the Hours of Service Act (45 U.S.C. 61-64b), the Signal Inspection Act (49 U.S.C. 26), and the Locomotive Inspection Act (45 U.S.C. 22-34), and FRA's state participation regulations reflected this limitation.

Section 4 of the Federal Railroad Safety Authorization Act of 1980, Public Law 96-423, 94 Stat. 1812 (October 10, 1980), authorized FRA to expand the state program to include participation in investigative and surveillance activities under the older Federal railroad safety statutes. Regulations implementing this expansion and revising 49 CFR part 212 were published on September 16, 1982 (47 FR 41048). However, because the Hazardous Materials Transportation Act ("HMTA"), 49 App. U.S.C. 1801 *et seq.*, was not among the statutes referred to in the 1980 amendment, states were not yet authorized to enforce the Federal regulations issued under that statute.

Section 28 of the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101-615, 104 Stat. 3244 (November 16, 1990) amended section 206 of the Safety Act to permit state inspection and surveillance under any Federal regulation "related to railroad safety." The legislative history makes

clear that the amendment was expressly intended to make the hazardous materials regulations issued under the HMTA one of the Federal railroad safety laws covered by FRA's state participation program. 136 Cong. Rec. S16867 (daily ed. October 23, 1990) (statement of Sen. Exon). Pursuant to that authority, FRA now revises part 212 to include qualification requirements for state personnel engaged in the inspection of railroads, shippers, and manufacturers who transport hazardous material by railroad, offer such material for transportation by railroad, cause such material to be transported by railroad, or manufacture bulk containers for the transport of such material by railroad.

On June 13, 1991, FRA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register (56 FR 27222) to revise the State Safety Participation Program regulations. The specific objective of the proposed revision included expansion of the existing program to provide for State hazardous materials inspectors and to make minor editorial changes where necessary to facilitate FRA's expanded authority with respect to hazardous materials safety inspections.

FRA held a public hearing on the proposal on August 21, 1991. Although no witnesses appeared to present testimony, FRA did receive written comments from six State agencies. All of these comments have been reviewed and fully considered during the formulation of this final rule.

All commenters expressed support for the proposed revisions, but recommended changes to one or more sections, primarily the qualification requirements set forth in § 212.227. Most of the commenting State agencies stated that the proposed requirements were too stringent and would, in fact, preclude the hiring of many qualified applicants. In response, the final rule permits the States to consider additional relevant experience in lieu of four years of managerial experience when making hiring decisions.

Also, Oregon's Public Utility Commission and Washington's Utilities and Transportation Commission noted that their authority extends only to railroads, not to shippers and other entities regulated by the hazardous materials regulations. State agencies that are restricted in this way are nonetheless free to participate in the program to the full extent of their authority. Since shipper compliance is an important part of this program, FRA urges these agencies to work toward obtaining full authority to permit the

most efficient use of State and Federal resources, but FRA will not exclude any State from the program simply because that State agency lacks authority over entities other than railroads.

The following is a further summary of written comments received and an explanation of the revisions made by FRA in response to those comments.

Section-by-Section Analysis

Subpart A—General

Section 212.3 Definitions.

Oregon questioned the definition of "manufacturer" as it relates to the proposed qualification requirements, suggesting that the two together would require applicants to have extensive engineering knowledge. As now written, an engineering background is not the sole method of meeting the qualification requirements. However, FRA believes that such a background is valuable and pertinent to completing the tasks of a hazardous materials inspector successfully. Many of our current inspectors have engineering degrees or experience.

In order to clarify the entities subject to the hazardous materials transportation regulations and the authority of participating state inspectors, the final rule now contains a definition of "shipper" that did not appear in the NPRM. This definition tracks the statutory language, and includes those companies or individuals that actually offer shipments for transportation, as well as those that arrange for or in any way cause such transportation.

Section 212.101 Program Principles.

Oregon believes that certain language in paragraph (b)(1) of this section, ("FRA and State inspections determine the extent to which the railroads, shippers, and manufacturers have fulfilled their obligations with respect to inspection, maintenance, training, and supervision") could be construed to mean that FRA inspectors must also have knowledge of and inspect for compliance with the regulations of the Environmental Protection Agency and the Occupational Safety and Health Administration. FRA does not intend this language to be construed in such a way, and in fact, our inspectors do not have the authority to enforce the regulations of another Federal agency.

Oregon also raised a question about the extent of FRA-State interface with respect to inspections in light of the language of paragraphs (b)(1) and (c) of this section. Paragraph (b)(1) describes the inspection efforts carried out by

FRA and State inspectors, and paragraph (c) states that FRA maintains oversight of railroad, shipper, and manufacturer conditions by conducting inspections in concert with participating State agencies. This section sets forth the manner in which all railroad transportation can be monitored nationally to ensure safety. FRA inspectors and inspectors from participating State agencies are authorized to conduct safety inspections and cite violations where necessary; those violations are then submitted to FRA headquarters for review and enforcement action. By retaining responsibility for final review and enforcement, FRA has the ability to see that enforcement policies are carried out consistently throughout the country, and to determine where problematic trends are developing.

Section 212.105 Agreements.

This section has required that the agreement under which states participate in the rail safety program accurately assert that the State has jurisdiction over the safety practices of railroad operations in that State. The proposal added shipper and manufacturing operations to this requirement, reflecting the expanded authority contained in the Hazardous Materials Transportation Uniform Safety Act of 1990. Oregon and Washington agencies submitted comments in which they assert that their jurisdiction is limited by State charter to railroads. Therefore, these States cannot enforce the Federal hazardous materials transportation regulations through their railroad safety units with respect to shippers and manufacturing companies that operate within the state or cause hazardous materials to be transported within the state. However, those States with limited jurisdiction may participate in the program to the full extent of their authority. The final rule makes clear the jurisdiction over railroads is the prerequisite for a State's participation, but requires that the agreement state whether the State agency has jurisdiction over the other entities as well. Clearly, FRA would prefer that all participating States actively enforce the Federal regulations against shippers and manufacturers, as well as railroads, but those state agencies that cannot do so will not be omitted from the program for that reason.

It is also important to note that the language of this subsection, specifically "the agency has jurisdiction over safety practices applicable to railroad, shipper, and manufacturer * * * operations in that State," does not limit the

participating State's authority to those railroads, shippers, and manufacturers who maintain a continuing physical presence in the State. Participating State inspectors will be enforcing current Federal regulations that apply throughout the United States, regardless of a shipment's origin; accordingly, those inspectors can enforce those regulations against entities whose activities have caused violations to occur in their states. As long as a violation is detected within the State's borders, the fact that the violation originated in another State is no bar to enforcement action by the State where the violation was detected.

Section 212.109 Joint planning of inspections.

No comments were received; this section is adopted as proposed.

Section 212.201 General qualifications of State inspection personnel.

This section requires State hazardous materials inspectors to have basic knowledge of the organization of shippers and manufacturers. Missouri suggested that this information is best handled on a case-by-case basis by individual inspectors, and should not be included in the general qualification requirements. FRA believes that being familiar with the dock procedures, shipping paper preparation, and supervisory personnel of the shippers and manufacturers in an inspector's assigned territory is pertinent to proper inspection, surveillance, and enforcement for which the inspector is responsible.

Section 212.227 Hazardous materials inspector.

State agencies from Oregon, Washington, Nevada, and Missouri submitted comments concerning the proposed qualification requirements for hazardous materials inspectors. Each agency stated that the requirements were unreasonably strict and would exclude many qualified applicants. The agencies noted that existing State salary limits would not attract candidates who could meet the proposed standards. In response, FRA has amended the proposal to provide States more flexibility. These new standards do not permit less qualified inspectors into the program, but they do permit the States to consider experience and education factors that did not appear in the NPRM. State agencies can now consider applicants with a bachelor's degree in a related technical field, applicants with two or more years of managerial experience related to enforcement of the Federal hazardous materials regulations,

or applicants with four years of recent experience in connection with those regulations. Typical related technical fields would include chemistry, chemical engineering, mechanical engineering, civil engineering, fire safety engineering and general engineering. The four-year managerial experience requirement has been reduced to two years, since FRA believes that two full years of such responsibilities will adequately prepare an applicant for the inspection and surveillance program. Finally, the rule now provides that applicants with four years of recent experience related to the enforcement of the Federal hazardous materials regulations can qualify to be State inspectors. This requirement would be filled by individuals who have worked on loading docks, inside manufacturing or shipper plants, or in railroad yards or offices where hazardous materials compliance activities were part of the job, or who have prepared, packaged, placed, loaded, or unloaded hazardous material shipments in compliance with the Federal regulations. Examples of specific job categories that meet this requirement are quality control specialist, technician, or loading rack employee in an industrial plant that regularly ships hazardous materials by railroad; tank car repairman; AAR Bureau of explosives inspector; State policeman or fireman trained in hazardous materials response techniques; and engineers, conductors, trainmasters, road foremen, or mechanics employed by railroads that regularly transport hazardous materials.

In connection with the qualification requirements, one State agency suggested that FRA permit hazardous materials cross-training for State inspectors who are currently working in another railroad safety discipline. Due to its limited training budget, FRA, which will provide the training, cannot expend valuable resources on inspectors who will be working in the hazardous materials area on a part-time basis only. Also, FRA believes that the hazardous materials discipline is a complex and potentially dangerous area, and therefore demands the full attention of these inspectors.

Section 212.229 Apprentice hazardous materials inspector.

One commenter suggested that an interim "compliance" inspector be developed to fit between the apprentice inspector level and the full hazardous materials inspector, and that this inspector be required to meet less stringent qualification criteria. As suggested, this inspector would inspect only railroads, particularly in those

states that do not have authority to inspect shippers and manufacturers. FRA believes that the amended qualification standards in the final rule considerably enlarge the pool of qualified applicants. The apprentice program permits those candidates who do not have adequate work or educational backgrounds to enter the program and obtain immediate training and experience. FRA can see no value in adding a third tier to the State inspection program given the added flexibility in the final rule. Also, the State hazardous materials inspection program is patterned after the programs for all other railroad safety disciplines, which have been very successful.

Regulatory Impact

Executive Order 12291 and DOT Regulatory Policies and Procedures

The final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be non-major under Executive Order 12291. Also, it is not considered to be significant under DOT policies and procedures (44 FR 11304, February 26, 1979) since it merely conforms the provisions of the existing regulatory program to the new statutory authorization.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. This final rule will only affect State governments and will not have an adverse economic impact on any entity because it does not place any new requirements or burdens on the public. Therefore, it is certified that the rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule will require modifications to the paperwork package for the information collection requirements contained in the Safety Participation Regulations (49 CFR 212) (OMB Approval Number 2130-0509). FRA estimates that approximately 10 states will participate and expand their existing programs to provide for State hazardous materials inspectors. Revised § 212.109 will increase the burden for the annual work plan for the ten participating states by 100 hours (10 states × 10 hours each). FRA estimates that approximately 20 hazardous materials inspectors will be involved and proposed new Section 212.227 will

increase the annual burden for submitting inspection reports to FRA as follows:

(1) Motive Power and Equipment Inspection Report (FRA 6180.59 and 6180.59A)—2,600 hours (2,600 reports × 1 hour each);

(2) Operating Practices Inspection Report (FRA 6180.65 and 6180.65A)—3,750 hours (5,000 reports × 45 minutes);

(3) Violation of Operating Practices/Hazardous Materials Regulations (FRA 6180.67)—400 hours (800 reports × 30 minutes each).

Total annual burden increase for the State Safety Participation Regulations is 6,850 hours. All estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments or suggestions for reducing these burdens to Gloria D. Swanson, Office of Safety, RRS-21, Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Desk Officer for FRA (OMB No. 2130-0509), 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated this final rule in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

FRA's State Participation Program permits the States to join in existing Federal railroad safety inspection activities. Participation by the States is entirely voluntary, and the addition of State hazardous materials inspectors to the program as set forth in this final rule will not change the voluntary nature of the program in any way.

This final rule does not directly regulate the States, does not in any way interfere with functions essential to the States' separate and independent existence, and does not displace the States' freedom to structure integral operations in areas of traditional governmental functions. Also, the final

rule does not affect the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 212

Hazardous materials transportation, Intergovernmental relations, Investigations, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, part 212, title 49, Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 212 is revised to read as follows:

Authority: Secs. 202, 205, 206, and 207, of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 438; and 49 CFR 1.49).

2. By amending § 212.3 to revise paragraphs (d)(5) and (d)(6); add paragraph (d)(7); redesignate paragraph (e) as paragraph (g); and add new paragraphs (e) and (f) to read as follows:

Section 212.3 Definitions.

(d) * * *

(5) The Accident Reports Act, as amended (45 U.S.C. 38-42);

(6) The Hours of Service Act, as amended (45 U.S.C. 61-64(b); and

(7) The Hazardous Materials Transportation Act (49 app. U.S.C. 1801 *et seq.*), as it pertains to shipment or transportation by railroad.

(3) *Manufacturer* means a person that manufactures, fabricates, marks, maintains, reconditions, repairs, or tests containers which are represented, marked, certified, or sold for use in the bulk transportation of hazardous materials by railroad.

(f) *Shipper* means a person that offers a hazardous material for transportation or otherwise causes it to be transported.

3. By amending § 212.101 to revise paragraphs (b)(1) and (c) to read as follows:

Section 212.101 Program principles.

(b)(1) The national railroad safety program is carried out in part through the issuance of mandatory Federal safety requirements and through inspection efforts designed to monitor compliance with those requirements. FRA and State inspections determine the extent to which the railroads,

shippers, and manufacturers have fulfilled their obligations with respect to inspection, maintenance, training, and supervision. The FRA and participating States do not conduct inspections of track, equipment, signal systems, operating practices, and hazardous materials handling for the railroads, shippers, and manufacturers.

(c) It is the policy of the FRA to maintain direct oversight of railroad, shipper, and manufacturer conditions and practices relevant to safety by conducting inspections and investigations in concert with participating State agencies.

4. By amending § 212.105 to revise paragraph (e)(1)(i) to read as follows:

Section 212.105 Agreements.

(e) * * *

(1) * * *

(i) The agency has jurisdiction over the safety practices of the facilities, equipment, rolling stock, and operations of railroads in that State and whether the agency has jurisdiction over shippers and manufacturers;

5. By revising § 212.109 to read as follows:

Section 212.109 Joint planning of inspections.

Prior to the beginning of each calendar year, each participating State applying for grant assistance under subpart D of this part shall develop, in conjunction with the FRA Regional Director of the region in which the State is located, an annual work plan for the conduct of investigative and surveillance activities by the State agency. The plan shall include a program of inspections designed to monitor the compliance of the railroads, shippers, and manufacturers operating within the State (or portion thereof) with applicable Federal railroad safety laws and regulations. In the event the participating State and the FRA Regional Director cannot agree on an annual work plan, the Associate Administrator for Safety shall review the matter.

(Approved by the Office of Management and Budget under control number 2130-0509)

6. By amending § 212.201 to revise paragraphs (d)(5) and (f) to read as follows:

Section 212.201 General qualifications of State inspection personnel.

(d) * * *

(5) Basic knowledge of rail transportation functions, the organization of railroad, shipper, and manufacturer companies, and standard industry rules for personal safety.

(f) In addition to meeting the requirements of this section, each inspector and apprentice inspector shall meet the applicable requirements of §§ 212.203 through 212.229 of this subpart.

7. By redesignating § 212.227 as § 212.231 and by adding new §§ 212.227 and 212.229 to read as follows:

Section 212.227 Hazardous materials inspector.

(a) The hazardous materials inspector is required, at a minimum, to be able to conduct independent inspections to determine compliance with all pertinent sections of the Federal hazardous materials regulations (49 CFR parts 171 through 174, and 179), to make reports of those inspections and findings, and to recommend the institution of enforcement actions when appropriate to promote compliance.

(b) The hazardous materials inspector is required, at a minimum, to have at least two years of recent experience in developing, administering, or performing managerial functions related to compliance with the hazardous materials regulations; four years of recent experience in performing functions related to compliance with the hazardous materials regulations; or a bachelor's degree in a related technical specialization. Successful completion of the apprentice training program may be substituted for this requirement.

(c) The hazardous materials inspector shall demonstrate the following specific qualifications:

(1) A comprehensive knowledge of the transportation and operating procedures employed in the railroad, shipping, or manufacturing industries associated with the transportation of hazardous materials;

(2) Knowledge and ability to understand and detect deviations from the Department of Transportation's Hazardous Materials Regulations, including Federal requirements and industry standards for the manufacturing of bulk packaging used in the transportation of hazardous materials by railroad;

(3) Knowledge of the physical and chemical properties and chemical hazards associated with hazardous materials that are transported by railroad;

(4) Knowledge of the proper remedial actions required to bring railroad,

shipper, and/or manufacturing facilities into compliance with the Federal regulations; and

(5) Knowledge of the proper remedial actions required when a hazardous materials transportation accident or incident occurs.

Section 212.229 Apprentice hazardous materials inspector.

(a) The apprentice hazardous materials inspector must be enrolled in a program of training prescribed by the Associate Administrator for Safety leading to qualification as a hazardous materials inspector. The apprentice may not participate in investigative and surveillance activities, except as an assistant to a qualified State or FRA inspector while accompanying that qualified inspector.

(b) An apprentice hazardous materials inspector shall demonstrate a basic knowledge of the chemical hazards associated with hazardous materials that are transported by railroad, including requirements such as shipping papers, marking, labeling, placarding, and the manufacturing and maintenance of packagings associated with these shipments.

Issued in Washington, DC on June 16, 1992.

Gilbert E. Carmichael,

Federal Railroad Administrator.

[FR Doc. 92-14581 Filed 6-23-92; 8:45 am]

BILLING CODE 4910-06-M

49 CFR Part 214

[FRA Docket No. ROS-2, Notice No. 1]

RIN 2130-AA48

Bridge Worker Safety Rules

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

ACTION: Final rule.

SUMMARY: FRA is establishing safety standards for the protection of those who work on railroad bridges. The rule requires railroads and railroad contractors to provide, and employees to use, fall protection and personal protective equipment, including head, foot, eye, and face equipment for employees as they work on railroad bridges. Also, standards are set forth for scaffolding. The purpose of this rule is to prevent accidents and casualties to employees involved in certain railroad inspection, maintenance and construction activities.

EFFECTIVE DATE: The rule becomes effective on August 24, 1992.

ADDRESSES: Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bill O'Sullivan, Chief, Track Division, Office of Safety, FRA, Washington, DC 20590. Telephone: (202) 366-6594; Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202-366-9252); Bob Greear, Industrial Hygienist, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone: 202-366-0506) or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202-366-0443).

SUPPLEMENTARY INFORMATION: Section 19 of the Rail Safety Improvement Act of 1988 ("RSIA"), Public Law 100-342, 102 Stat. 624 (June 22, 1988), amend section 202 of the Federal Railroad Safety Act of 1970 ("FRSA"), 45 U.S.C. 431, by adding new subsection (n), which provides that FRA shall " * * * issue such rules, regulations, orders, and standards as may be necessary for the safety of maintenance-of-way employees, including standards for bridge safety equipment, such as nets, walkways, handrails, and safety lines, and requirements relating to instances when boats shall be used."

On January 30, 1991, FRA published a Notice of Proposed Rulemaking on Bridge Worker Safety Standards (56 FR 3434) ("NPRM") that set forth proposals to address those hazards encountered by railroad bridge employees. The proposal included standards for fall protection, personal protective equipment, and contingencies for working over or adjacent to water. As noted in the preamble of the NPRM, pertinent, applicable regulations promulgated by the Occupational Safety and Health Administration ("OSHA") existed, but confusion concerning the authority and enforcement of those standards was prevalent. FRA determined that the safety interests of railroad employees would best be served through a regulatory program of its own.

FRA solicited written comments on the proposal and conducted a public hearing on May 1, 1991 to gather further information. As a result of those comments and through additional investigation, FRA now publishes its final rule. The rule sets forth a comprehensive regulatory program to address and reduce the exposure to risk faced by those who work on railroad

bridges, including personal fall arrest systems, safety nets, standards for scaffolding, contingencies for working over or adjacent to water, and head, eye, face, and foot protection. While FRA now adopts these standards as part of our existing railroad safety program, these regulations follow the guidelines set forth by OSHA's construction and general industry standards. There are several reasons for this. Because OSHA's existing regulations apply to railroad employees until the effective date of this rule, FRA necessarily made every attempt to ensure that the rule does not encompass safety rules that will in any way diminish the protection bridge workers are currently afforded under OSHA's authority. Also, OSHA's primary mission involves developing industry and construction work practices that will decrease or prevent occupational hazards. Many 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 in the workplace. FRA is relying on OSHA's greater expertise in occupational health and safety as well as FRA's own expertise on railroad safety.

The final rule addresses a broad range of safety concerns that confront railroad bridge workers. However, where additional working conditions exist that are not addressed in this rulemaking, such as exposure to lead, respiratory, hearing and welding protection, or hazard communication standards, the OSHA regulations that address these subject areas apply.

General Summary of Public Comments

FRA received comments from the Brotherhood of Maintenance of Way Employees ("BMWE"), the United Transportation Union ("UTU"), American Association of Railroads ("AAR"), the American Short Line Railroad Association ("The Short Line Association"), individual members of some of these organizations, OSHA, the State of Maryland's Division of Industry and Labor, Osmose Wood Preserving, Inc. (a bridge renovation company), Sinco Products, Inc. (a fall protection manufacturing and installation company), and individual members of the public.

Most comments focused on the height threshold at which fall protection becomes mandatory, the requirement of safety nets, the adequacy of our respiratory protection proposal, and the applicability of existing OSHA regulations. Each of these subjects is

outlined in detail in the Section-by-Section Analysis that follows.

The issues of welding protective equipment and lead exposure standards were also raised by certain commenters. Given the likelihood that railroad bridge workers will confront each of these hazards in bridge repair and maintenance, the commenters expressed concern that the Bridge Worker Safety Standards did not address these subject areas. While FRA concurs that these hazards are prevalent and that railroad employees who work on bridges must be protected from these dangers, existing regulations administered and enforced by OSHA comprehensively address these concerns. FRA's Policy Statement (43 FR 10583, March 14, 1978) set forth which Federal agency would maintain authority to regulate workplace safety hazards for railroad employees. OSHA, long recognized as the agency expert in occupational health issues, would cover those areas that required health-related expertise, and FRA would maintain primary authority to address safety issues intrinsic to the railroad environment. Welding protective equipment and lead exposure standards fall within those areas requiring extensive health-based expertise and are therefore, best regulated by OSHA. FRA therefore defers to OSHA's existing authority with respect to these issues, but with publication of this final rule asserts authority over the personal safety issues addressed by part 214 that can be readily included in routine inspections for fall protection.

The UTU expressed concern that the Bridge Worker Safety Standards did not require walkways and railings on all railroad bridges. The UTU stated that operating employees are sometimes required to crawl beneath equipment stationed on a railroad bridge to perform inspections, and that these employees would benefit from a universal walkway requirement. FRA has determined that such a requirement should not be undertaken for several reasons. FRA is not aware of circumstances in which operating employees are required to crawl beneath equipment on bridges, and would act to prevent any such requirement. Also, as was discussed in the NPRM, FRA extensively reviewed the issue of mandatory walkways for all railroad bridges and determined that such requirements would be less safe, as well as quite expensive. In addition, the statutory mandate that prompted this rulemaking proceeding was directed specifically at safety issues directly affecting maintenance-of-way employees, not operating employees. Finally, FRA has, in fact, included

walkways in this final rule as one type of fall protection that railroads or railroad contractors may utilize in lieu of personal fall arrest systems or safety nets. In addition, those walkways must meet certain height and strength standards.

Section-by-Section Analysis

As proposed, the Bridge Worker Safety Standards were to become a subpart of 49 CFR part 218, Railroad Operating Practices. However, FRA has determined that these standards more logically fit in a new separate part, entitled Railroad Workplace Safety, located at 49 CFR part 214. FRA also revised section titles and reorganized the order in which they appear in the final rule. These changes are set forth in the Redesignation Table below:

REDESIGNATION TABLE

NPRM	Final rule
§ 218.5 Definitions.....	Subpart A—General.
§ 218.71 Purpose and scope.	§ 214.1 Purpose and scope.
§ 218.72 Walkways and railings.	§ 214.3 Application.
§ 218.73 Safety belts, lifelines and lanyards.	§ 214.5 Responsibility for compliance.
§ 218.74 Safety nets.....	§ 214.7 Definitions.
§ 218.75 Working over or near water.	Subpart B—Bridge worker safety standards.
§ 218.76 Respiratory protection.	§ 214.101 Purpose and scope.
§ 218.77 Head protection.	§ 214.103 Fall protection, generally.
§ 218.78 Scaffolding.....	§ 214.105 Fall protection systems standards and practices.
§ 218.79 Personal protective equipment.	§ 214.107 Working over or adjacent to water.
§ 218.80 Food protection.	§ 214.109 Scaffolding.
§ 218.81 Eye and face protection.	§ 214.111 Personal protective equipment, generally.
	§ 214.113 Head protection.
	§ 214.115 Foot protection.
	§ 214.117 Eye and face protection.

The section-by-section analysis that follows is organized according to the section number and order used in the final rule, with reference to the former section number used in the NPRM.

Section 214.1 Purpose and Scope

Proposed Rule

This section was not contained in the proposed rule.

Comments: No comments received.

Final Rule

Paragraph (a) of this section states that the purpose of the new part 214 is to

prevent accidents and casualties to employees involved in certain railroad inspection, maintenance, and construction activities. Paragraph (b) states that these regulations provide minimum standards for the subjects addressed, and that railroads and contractors may adopt more stringent requirements, so long as they are not inconsistent with this part.

This section incorporates standard introductory language that was not necessary in the NPRM when the proposed regulations were going to be part of 49 CFR Part 218, Railroad Operating Practices. Because a new part in the Code of Regulations is being established with this final rule, the scope and purpose of the rule must be set forth in order to assure proper application of these regulations. This section limits application of the safety standards set forth in this part to those inspection, maintenance, and construction activities described in Subpart B, Bridge Worker Safety Standards, and any additional subparts that may follow. FRA does not in any way intend that Part 214, Railroad Workplace Safety, be read to establish standards for any occupational hazards beyond those addressed by this part.

Section 214.3 Application

Proposed Rule

This section was not contained in the proposed rule.

Comments: No comments received.

Final Rule

This section states that part 214 applies to all railroads operating rolling equipment on track that is part of the general railroad system. As discussed above, this section was not necessary in the NPRM, but must now be included to ensure that the entities subject to the regulations addressed by part 214 are defined. Should FRA later determine that this rule should apply to certain self-contained railroads that are not part of the general system (e.g., certain tourist railroads), it will propose a new rule to accomplish that change. Such a proceeding could explore whatever unique factors apply in the context of such railroads.

Section 214.5 Responsibility for Compliance

Proposed Rule

This section was not contained in the proposed rule.

Comments: No comments received.

Final Rule

This section states that all persons who violate the standards of this part are subject to a civil penalty, and explains the circumstances under which an individual may be assessed a penalty. The RSIA established liability for individuals who willfully violate any of the railroad safety regulations. The authority to impose penalties against individual violators exists with respect to all of the safety standards enforced by FRA, but with the addition of § 214.5 in this final rule, FRA now expressly incorporates that authority in part 214. In addition, as a logical concomitant of this provision, various provisions requiring that certain forms of protection be provided have been amended to require that, when provided, they be used.

Section 214.7 Definitions

In the course of assimilating the written comments and statements given at the public hearing, it became apparent to FRA that additional terminology should be defined in the final rule in order to accurately reflect fall protection systems that are currently available in the market for use, or that are, in fact, routinely being used by general industry. Therefore, many of the terms defined in the final rule and listed below did not appear in the proposed rule. Unless otherwise noted, the definitions are taken from existing or proposed OSHA regulations that are based on current trade language.

Anchorage**Proposed Rule**

This term was not defined in the proposed rule.

Comments: No comments received.

Final rule

The common terminology now employed to mean a lanyard, lifeline, and safety belt system for fall protection is a "personal fall arrest system." Anchorage is an integral component of a personal fall arrest system, and therefore is defined. FRA chose the definition utilized by OSHA in its regulations concerning fall protection, which reflects common trade usage. A particular worksite will determine the type of anchorage available, and so the definition allows for flexibility by stating only that it be a secure point of attachment for the other personal fall arrest system components.

Body belt**Proposed Rule**

This term was not defined as such in the proposed rule, but is the functional

equivalent of "safety belt," which is defined in the proposal as a device, usually worn around the waist, which, by reason of its attachment to a lanyard and lifeline or a structure, will prevent a worker from falling.

Comments: Many commenters urged FRA to update this definition to reflect current terminology, including the addition of a deceleration device following lanyard and lifeline. Also, most commenters stated that use of body harnesses, rather than body belts, is now preferred practice. The body belt does not absorb stress forces in a fall as well as a harness can, and therefore, may cause serious internal injury to the wearer. According to commenters, many companies no longer manufacture belts because of this risk, and the construction industry will phase out their use in the near future. However, there are limited situations, climbing poles for instance, in which belts can be utilized safely.

Final Rule

FRA adopts the definition used by OSHA that reflects current trade language. Although the final rule permits the use of safety belts as part of a personal fall arrest system, use of harnesses is preferred.

Body Harness**Proposed Rule**

This term was not defined in the proposed rule.

Comments: As stated above, all commenters urged FRA to include or mandate the use of body harnesses as a component of a personal fall arrest system. The harness distributes the fall arrest forces over the thighs, shoulders, pelvis, waist, and chest, and therefore decreases the likelihood of serious injury to the wearer. The majority of industry participants in this proceeding stated that harnesses are most often used.

Final Rule

FRA adopts the definition used by OSHA that reflects current trade terminology.

Competent Person**Proposed Rule**

This term was not defined in the proposed rule.

Comments: No comments received.

Final Rule

Defining this term is necessary in light of paragraphs added to the final rule that require oversight or supervision by a person with knowledge, training, and relevant experience to adequately assess safety hazards. The definition contains these factors, and a

requirement that the individual also possess the authority to take prompt corrective measures, if necessary.

Deceleration Device**Proposed Rule**

This term was not contained in the proposed rule.

Comments: No comments received.

Final Rule

This is defined as a device that dissipates fall forces during a fall arrest. It is often a type of lanyard or self-retracting lifeline.

Equivalent**Proposed Rule**

This term was not contained in the proposed rule.

Comments: No comments received.

Final Rule

In order to give railroads and railroad contractors flexibility in choosing equipment not specified in the final rule, but perhaps more amenable to the railroad environment or more technically advanced, this term has been added to the rule at various locations. The railroad or railroad contractor bears the burden of demonstrating that the alternative device does not in any way decrease employee safety.

Free fall**Proposed Rule**

This term was not contained in the proposed rule.

Comments: No comments received.

Final Rule

This term is significant in determining the amount of force applied to one who wears a personal fall arrest system. It is defined as the act of falling until the arresting forces begin to take effect.

Free Fall Distance**Proposed Rule**

This term was not contained in the proposed rule.

Comments: No comments received.

Final Rule

As stated above, this phrase is important in determining the amount of force applied to a body before the fall arrest system begins to take effect. As defined, the distance does not include deceleration distance, or lifeline and lanyard elongation.

Lanyard**Proposed Rule**

The proposed rule defined lanyard as a rope, suitable for supporting one person, that is attached to a safety belt or harness and a lifeline or other substantial object.

Comments: The AAR urged FRA to expand this definition to include cable, nylon webbing, or equivalent material in addition to "rope."

Final Rule

FRA incorporated the AAR's suggestion, and adopted the definition used by OSHA that reflects current trade language. The term is now defined as a flexible line of rope, wire rope or strap that secures a body belt or harness to a deceleration device, lifeline or anchorage.

Lifeline**Proposed Rule**

Lifeline was defined as a rope, used for supporting one person, to which a lanyard or safety belt is attached.

Comments: The AAR objected to the clause which states that a lifeline is used for supporting one person, and claimed that it is common practice to attach more than one person to a lifeline.

Final Rule

The new definition states that a lifeline is a flexible line connected to an anchorage from which other portions of a fall arrest system are attached. More than one person may be attached to a lifeline, as common practice indicates, so long as the line complies with required standards.

Personal Fall Arrest System**Proposed Rule**

This term was not contained in the proposed rule.

Comments: Commenters urged FRA to adopt this terminology for the safety belt, lanyard, lifeline fall protection system outlined in the proposed rule. It reflects common trade language.

Final Rule

The final rule defines this term as a system used to stop a fall from a working level, consisting of an anchorage, connectors, body harness or belt, lanyard, deceleration device, lifeline, or suitable combination of these.

Railroad**Proposed Rule**

This definition was not contained in the proposed rule.

Comments: No comments received.

Final Rule

This definition is taken from section 202(e) of the Federal Railroad Safety Act of 1970, as amended by the RSIA, and includes all forms of non-highway transportation that run on rails or electro-magnetic guideways.

Railroad Employee or Employee**Proposed Rule**

This term was defined as any employee of a railroad or railroad contractor responsible for the construction, inspection, testing, or maintenance of a bridge, whose duties affect the track, bridge structural members, operating mechanisms, water traffic controls, signal, communication, or train control systems integral to that bridge.

Comments: An individual commenter suggested that FRA change this term to 'bridge employee' to avoid confusion with other types of railroad employees.

Final Rule

The final rule defines "railroad employee" and "employee" together in this section, making the terms synonymous throughout part 214. FRA did not change the term to 'bridge worker' in the final rule to avoid any confusion with terms used by employers for labor categories that could conceivably limit the scope of this part. The definition is adopted as proposed.

Railroad Bridge**Proposed Rule**

Railroad bridge was defined as a structure supporting one or more railroad tracks, above land or water, spanning at least 12 feet, and including the entire structure between the faces of the abutments.

Comments: No comments received.

Final Rule

Adopted as proposed.

Self-Retracting Lifeline/Lanyard**Proposed Rule**

This term was not contained in the proposed rule.

Comments: This term was employed by industry, labor, and OSHA in general discussions of new components of a personal fall arrest system.

Final Rule

The definition adopts OSHA's language, which reflects common trade usage.

Snap-Hook**Proposed Rule**

This term was not contained in the proposed rule.

Comments: This term was used by OSHA and industry commenters in general discussion of fall protection systems.

Final Rule

The final rule adopts OSHA's language, which reflects common trade usage.

Section 214.101 Purpose and Scope**Proposed Rule**

Proposed as § 218.71, this section stated the purpose and scope of this subpart to be the prevention of accidents and casualties to railroad employees who work on railroad bridges. Railroads and railroad contractors may prescribe more stringent additional requirements. The proposed subpart would apply to all railroad and railroad contractor employees who work on railroad bridges.

Proposed paragraph (c) provided that employees conducting track repairs of a minor nature were exempt from requirements for safety nets, respiratory protection, and drowning protection.

Proposed paragraph (d) provided that safety belts, lifelines, lanyards and safety nets were not required where installation of these devices poses a greater threat than working without fall protection altogether.

Proposed paragraph (e) set the fall protection threshold. Employees working at heights of six feet or more must be protected with safety belts, lifelines, and lanyards. When working at heights of 25 feet or more, a safety net must be provided.

Comments: Several commenters found this section confusing and suggested organizational changes. Further discussion of these changes is found in the description of the final rule set forth below.

The AAR objected to the use of "minimum" safety rules in paragraph (b), stating that "mandatory" was more appropriate.

The AAR and Short Line Association urged FRA to expand the track repair exception found in proposed paragraph (c) to include signal repair, all minor inspection functions, emergencies such as fire fighting, driving piles, re-railing cars, unloading ballast, freeing animals, supervisory activities, and the use of fixed ladders. An individual commenter and Maryland's Division of Labor and Industry objected to the exception to

respiratory protection in this paragraph, stating that any exposure, no matter how brief, to certain contaminants can be hazardous.

We received no comments on proposed paragraph (d), which provided for an exception to the fall protection requirement where installation of fall protection systems poses a greater threat than working without fall protection.

Proposed paragraph (e) stirred much debate. Many commenters, including the AAR and OSHA, suggested that this paragraph be moved to its own section setting forth the threshold at which fall protection becomes necessary. Most of the discussion, however, centered on the imposition of the six-foot threshold. Because proposed paragraph (e) is now § 214.103(a) in the final rule, see discussion of those issues with that section set forth below.

Final Rule

FRA agrees that the scope provisions as proposed were not organized cohesively, and so this section now contains only statements of general application. A separate section, § 214.103, is now set aside for the height threshold and exceptions to fall protection requirements. For discussion of those issues, see § 214.103 below.

Paragraphs (a) and (b) of § 214.101 are adopted as proposed. Use of "minimum railroad safety rules" in paragraph (b) reflects traditional regulatory language. This terminology encourages railroads and their contractors to revise or improve these standards and employee safety as new technology and information become available, so long as this is done without contradicting the standards in this rule.

Paragraph (c) as adopted in the final rule is limited to the general statement of application found in the proposal, and to that extent, is identical to the application statement in § 218.71(c) of the proposed rule. The exception for minor track repairs that followed this language in the proposed rule has now been moved to § 214.103(d) and is discussed with that section below.

Paragraph (d) as set forth in § 214.101 of the final rule did not appear in the language of the proposed rule. However, this subsection incorporates that portion of the preamble of the NPRM which discussed the complementary jurisdiction of FRA and OSHA with respect to occupational hazards in the railroad workplace. Paragraph (d) states that any working conditions involving the protection of railroad employees working on railroad bridges not within the subject matter addressed by the regulations found in chapter II of title 49

of the Code of Federal Regulations (*i.e.*, all railroad safety regulations), including respiratory protection, hazard communications, hearing protection, welding and lead exposure standards, is governed by OSHA's regulations. This language reiterates the jurisdictional delineations that were set forth in FRA's 1978 Policy Statement (42 FR 22184), and provides additional clarity for employees and railroads who must comply with Federal regulations. In written comments, OSHA urged FRA to affirmatively make this statement, and FRA believes that doing so will eliminate any remaining confusion with respect to subject matters that are not explicitly addressed in this final rule.

Section 214.103 Fall Protection Generally

Proposed Rule

This section, formally paragraph (e) of § 218.71, stated that when employees worked six feet or more above the ground, they must be protected by the use of safety belts, lanyards, and lifelines.

Comments: This proposal created significant controversy among the industry representatives who participated in the proceeding. The BMW and OSHA concurred with a height threshold of six feet.

FRA adopted OSHA's current construction threshold of six feet in the proposed rule because the duties railroad employees perform on bridges are in fact typical construction duties: maintaining, repairing, painting, and inspecting the bridge structure. However, the AAR, the Short Line Association, and their individual members strongly urged FRA to move to a twenty-foot threshold. A major bridge restoration company suggested adoption of a fifteen-foot threshold.

FRA solicited information from these participants concerning the height thresholds they require in internal operating rules, and any relevant injury data they possess for employee falls from railroad bridges. Of the AAR members who provided information, three use a threshold of 25 feet, two use 20 feet, two use 10 feet, one uses 6 feet, and four do not specify a threshold. Of the Short Line Association members, approximately 50 per cent hire contractors to do any bridge construction work, 20 per cent set the threshold at 20 feet or more, 20 per cent set the threshold at 20 feet, one member at 15 feet, one at 10 feet, and two at 6 feet. Osmose, a bridge restoration company, uses fifteen feet. As stated by a Canadian participant, Canada imposes a ten-foot standard currently, but may

be amending the threshold to six or eight feet in the near future.

The BMW and the Short Line Association had no relevant injury data to submit. OSHA indicated that deaths have been reported in falls from heights of eight feet. The AAR submitted the following casualty information: (1) 10 incidents in falls from heights less than 6 feet with 67 lost man-days per incident, 2 + million man-hours worked at this height, 318 lost man-days per million man-hours, and .95 incidents per 200,000 man-hours; (2) 30 incidents in falls from heights between 6 and 19 feet with 69 lost man-days per incident, 14 + million man-hours worked at this height, 132 lost man-days per million man-hours, and .38 incidents per 200,000 man-hours; and (3) 15 incidents in falls from heights over 19 feet with 103 lost man-days per incident, 6 + million man-hours worked at this height, 223 lost man-days per million man-hours, and .43 incidents per 200,000 man-hours. AAR notes that the figures for lost man-days per million man-days and number of incidents per 200,000 man-hours are slightly overstated because 13 railroads reported in some categories, and 14 in others.

FRA's casualty data for injuries are not delineated by distance of fall. However, our fatality data are: In seven of eight employee fatality investigations of falls from railroad bridges during the period of January, 1981 through December, 1990, the lowest height at which death occurred was 10 feet, and the highest 112 feet. The average for the seven fatalities is 37 feet. (Distance of fall was not noted in the eighth investigation.)

OSHA based the existing six-foot construction standard on studies that indicated that the 90th percentile man could do a complete body inversion and land on his head, likely to result in serious injury, from a height of six feet. Also, six feet was the current ANSI standard when this threshold was chosen.

While the AAR points to examples where OSHA has established a height threshold of 20 or 25 feet, each of those instances represents exceptions to the general rule where special circumstances are present. For instance, an exception is given where employees work on low-pitched roofs. Also, where employees work on fixed ladder stands that are not likely to shift, a higher threshold is permitted. In each of these instances, the chance of falling is diminished by the structure of the work site.

Several industry commenters also suggested that the force of the fall arrest system may cause greater injury than a

fall of six feet. However, there is not data available to confirm or deny this proposition.

Finally, all industry representatives asserted that the cost of complying with a six-foot threshold would be prohibitive. Implied in this assertion is the fact that only one of AAR's members and two Short Line Association members are currently in compliance with applicable OSHA regulations. (For further discussion of this issue, please see discussion of personal protection equipment, §§ 214.111 through 214.115 below.)

Final Rule

Section 214.103(a) of the final rule states that fall protection, either a personal fall arrest system or safety nets, must be provided and used where employees are working twelve or more feet above the ground or water surface. Three exceptions (formerly § 218.71 (c) and (d), and § 218.72) to this requirement follow in paragraphs (b) through (d).

FRA believes that the twelve-foot standard best provides necessary fall protection for railroad bridge employees. In analyzing the practical application of a six-foot standard in the railroad bridge environment, FRA determined that it would inhibit the movement of the worker to the point that many may choose not to wear the device at that height, and it would in many instances allow an employee to hit the ground or water surface below before the protective device could stop the fall. Unlike traditional building construction sites where the point of attachment for a fall arrest system is overhead, the configuration of most railroad bridges will require that the point of attachment be at foot-level or will require installation of superstructure at considerable risk to those performing that work. Most railroad bridges simply do not have secure structures above the rails that will support such attachment. A standard six-foot lanyard attached at the rail on one end and to the body harness on the other will allow an employee who is standing and walking very little movement while working on the bridge. To the extent work is rendered impractical or significant discomfort or annoyance is caused to the wearer, compliance will likely suffer. Any habit of noncompliance may carry over to work at greater heights.

When a standard fall arrest system is engaged, the length of an extended lanyard and deceleration device totals approximately 9 1/2 feet. If the surface below is not farther from the working surface than 9 1/2 feet, and if the

protective device is attached at the rail on the side of the bridge being worked on, an employee will hit the ground or water surface below before the system begins to arrest the fall. A possible alternative to this scenario is to attach the system to the opposite side of the bridge being worked on, which would take up approximately four feet of the lanyard length. However, this would greatly restrict the movement of the employee and would introduce tripping hazards that do not otherwise exist. Given the low likelihood of serious injury from short falls and the sharply increased risk of injury from tripping over lanyards strung along a bridge surface, FRA believes employees are safer on railroad bridges at low heights without personal fall arrest systems.

Therefore, given that the length of the fully engaged fall arrest system itself is close to ten feet, and that the length of the legs and torso that will hang below the body harness must also be considered, FRA believes that a twelve-foot standard provides the safest and most practical height threshold for fall protection devices.

Safety nets are an alternative to the body harness and lanyard system, but are nearly impossible to install effectively at a height of less than twelve feet, given the distance a body will deflect the net upon contact.

Also, paragraph (a) now permits selection of the appropriate fall protection, either a fall arrest system or safety nets, by the railroad or railroad contractor. In the proposed rule, personal fall arrest devices were required at six feet and safety nets were mandated at 25 feet. Many industry commenters asserted that net installation is unreasonably expensive, time-consuming, dangerous, and in some cases, impossible due to railroad bridge configurations. Also, the commenters claimed that safety nets can decrease employee safety by giving those who work above them a false sense of security, which in turn produces dangerous behavior. The railroads and bridge restoration company stated that they rely exclusively on personal fall arrest systems.

The BMWF also objected to the safety net provision as proposed. They felt that the 25-foot threshold should be strengthened to ten feet.

In recent rulemaking proceedings, OSHA has moved to an option approach for fall protection systems. That agency's most current proposals set a height threshold, establish standards and criteria for nets and fall arrest devices, and permit the employer to choose the system that can best

accommodate environmental and safety concerns. (55 FR 13360, April 10, 1990.)

FRA believes that this approach is particularly advantageous in the railroad environment. Where railroad bridge configurations make nets impossible, or where the exposure to risk is of minimal duration, the personal fall arrest system can be used. However, where a major renovation that may go on for months is undertaken, nets can be chosen. This change in the final rule also responds to the safety concerns raised by the BMWF concerning the net height threshold: if chosen, nets must now be installed at the same height threshold as personal fall arrest devices.

Paragraph (b) of this section states that the fall protection requirements shall not apply if installation of the system poses greater risk than performing work without fall protection. The railroad or contractor has the burden of showing this in any action brought by FRA to enforce the fall protection requirements. In other words, once FRA had demonstrated the absence of fall protection, the burden would shift to the railroad to justify its absence by demonstrating that it properly determined that installation posed a greater risk. This section (formerly § 218.71(d) in the proposed rule) received no comments and is adopted substantively as proposed.

Paragraph (c) of the final rule concerning walkways and railings contains the language of former § 218.72 in the proposed rule, and has been adopted with changes. This paragraph stated that fall protection was not required where stable walkways and railings are present, so long as employees do not work beyond the railings, over the side of the bridge, or where large holes exist. In written comments, OSHA noted that the provision as written did not address protection for workers who are on ladders or other elevation devices stationed on the walkways. OSHA asserted that because those employees, once elevated, are not restrained or protected by walkways and railings, other means of fall protection should be provided. FRA concurs with this assessment and has added that restriction to the fall protection exception.

Also, the final rule requires the presence of toeboards, and states that the walkways must be of sufficient height, width, and strength to prevent an employee fall. FRA believes that this new language provides pertinent guidance to railroads, contractors, and employees as to what constitutes "secure" walkways and railings.

Walkways and railings that meet the standards set forth in the American Railway Engineering Association's Manual for Railway Engineering will satisfy this subsection.

Paragraph (d) of the final rule contains the minor repair exception that was part of § 218.71(c) in the proposed rule. This exception has been adopted with changes. The word "track" has been removed, the word "inspections" has been added, the words "or in close proximity to" have been removed, the word "outside" has been added before "rails", the term "exclusively" has been inserted before "between the outside rails," and the exception no longer applies to respiratory protection. Substantively, the paragraph now permits an exception to fall protection when employees are performing minor repairs in any discipline, or are doing inspections, so long as those activities can be accomplished by working exclusively between the outside rails of the bridge.

FRA added the word "outside" in response to a commenter who questioned whether an employee working between two lines of track on a multiple-track bridge would come within this exception. As now written, such an employee will not be required to have fall protection so long as there are no gaps in the area between the rails through which a person could fall.

FRA added the term "exclusively" to further define those activities that will be categorized as "minor," and therefore truly merit being accomplished without fall protection of any sort. Given the obvious risks inherent in working without fall protection, this exception will be enforced as literally and narrowly as possible. Therefore, if an activity involves movement requiring one to stand or travel with one or more weight-bearing portions of the body beyond the boundaries of the rails, no matter how slight the duration, fall protection must be provided. Clearly, replacing all or a large percentage of the ties on the bridge will not constitute repairs of a minor nature that can be completed exclusively between the rails. However, walking the length of the bridge, between the rails, to visually inspect the ties would come within paragraph (d) of § 214.103.

The expansive language that the AAR urged FRA to insert in this exception, including fire-fighting, re-railing cars, unloading ballast, pile driving and freeing animals, has not been adopted. Many of these functions may, in fact, fall within the exception set forth in paragraph (b) of this section. FRA believes that those determinations should be made on a case-by-case basis

by the railroad or railroad contractor, and should not be excepted from coverage in a sweeping fashion.

Because FRA has determined that OSHA is the appropriate Federal agency to regulate respiratory protection for railroad employees, this final rule does not include respiratory standards. (See Respiratory Protection discussed below.) Therefore, this paragraph no longer contains an exception to respiratory protection when employees are doing minor repairs or inspections. Also, FRA concurs with those commenters who stated that even a brief exposure to certain contaminants can be hazardous, and therefore, respiratory protection should be required whenever such exposure exists.

Section 214.105 Fall Protection Systems Standards and Practices

Proposed Rule

This section combines what was § 218.73 (Safety belts, lifelines, and lanyard) and § 218.74 (Safety nets) in the proposed rule. Proposed § 218.73 provided that lifelines, safety belts, and lanyards be used only for employee safeguarding, and that any device subjected to full impact load be removed from service. Also, lifelines were to be secured to an anchorage above the point of attachment and be capable of supporting a dead weight of 5,400 pounds. Lanyards were to be of ½ inch nylon, or equivalent, permit a fall of no greater than six feet, and be capable of holding 5,400 pounds. All hardware was to be drop forged or pressed steel and possess smooth surfaces. All hardware would be capable of withstanding a tensile loading of 4,000 pounds. Proposed § 218.74 provided that nets must be installed where the workplace is 25 feet above the ground or water surface, and that work would not begin until the net was in place. The net would extend eight feet beyond the edge of the work surface and be hung so that impact would not cause the falling body to contact surfaces below the net. The remaining paragraphs set performance standards and required that forged steel safety hooks be used.

Comments: Industry representatives, OSHA, and Maryland's Division of Labor and Industry submitted comments on these issues. Generally, they recommended that FRA move to the more current "fall arrest system" terminology and incorporate recent performance standards for those devices. In particular, OSHA and Sinco Products, Inc. (a fall protection system manufacturing and installation company) outlined new ANSI standards for safety nets, and performance

language for fall arrest system devices. OSHA and an individual commenter suggested that any device subjected to a full impact load be retained if the fall is minor (two feet, for instance), and a competent individual can certify that no damage that would reduce the component's strength occurred. Another individual urged that these devices be discarded as proposed because internal tearing of component parts could diminish load strength, but would not be a visible defect.

Final Rule

FRA believes that the description of fall protection devices in the final rule should reflect certain suggested changes in order to provide for adequate employee safety. The standards set forth in this section now reflect OSHA's most current performance standards. This section has been reorganized as follows: Paragraph (a) sets forth general requirements for the use, maintenance and repair of all fall protection devices, and requires certain operating practices; paragraph (b) sets performance standards and use guidelines for personal fall arrest systems; and paragraph (c) sets standards and use guidelines for safety nets.

Paragraph (a) requires that these systems be used only for fall protection, that they be protected from deterioration, that they be inspected prior to each use, that defective devices be discarded, and that employees be instructed on proper use and storage, and that employees be advised of any changes in the system. The railroad or contractor must provide for prompt rescue of employees who have fallen. All connectors must be corrosion-resistant and have smooth edges to prevent damage to any other components in the system. All anchorages must be capable of supporting at least 5,000 pounds and be used under the supervision of a qualified individual. The program must have a safety factor of at least two. Finally, where devices have been subjected to full impact loading, the device may be retained if the impact was slight (the fall was no more than two or three feet), and a competent person has determined that no damage occurred to the device.

Paragraph (b) sets forth performance standards for the components of the fall arrest system. Lanyards and lifelines that hold one employee must withstand a load of 5,000 pounds. Self-retracting lifelines and lanyards that limit free fall distance to two feet must withstand a tensile load of 3,000 pounds and those that do not limit the free fall distance must be capable of 5,000 pounds applied

force. Horizontal lifelines shall be installed under the supervision of a competent person, and lifelines may not be made of natural fiber rope. When using a body belt, the system shall limit the arresting force on the employee to 900 pounds. When using a body harness, the system shall limit the arresting force to 1,800 pounds. The system shall be arranged to limit free fall to six feet, to withstand twice the impact energy of free falling six feet, shall bring an employee to a complete stop and limit maximum deceleration distance to 3.5 feet. When vertical lifelines are used, there shall be a separate line for each employee. Dee-rings and snap-hooks shall be capable of sustaining 5,000 pounds and withstand 3,600 pounds without cracking or deformation. Snap-hooks cannot be connected to each other, shall be compatible with the member they are connected to, and cannot be placed directly to webbing or rope, each other or to a horizontal lifeline.

Paragraph (c) sets forth the new standards for safety net systems. Safety nets shall be installed as close to the work surface as possible, but the distance between the net and work surface cannot exceed 30 feet. If installation is beyond 30 feet, a personal fall arrest system is also required. Installation shall be accomplished so that any fall to the net is unobstructed, and that there will be no contact with surfaces below the net. All nets must be drop-tested, unless the railroad or contractor can demonstrate that the test is impossible. Such a claim must be certified by a competent person. In order to allow for the fact that objects tend to drift horizontally while falling vertically, the net must extend outward from the edge of the work surface according to the distance of the vertical drop from the workplace to the net. Nets must be inspected once a week for deterioration, and after each occurrence that could reduce the safety of the net. Any objects that fall into the net must be removed by the beginning of the next work shift, if not sooner. The maximum breaking strength of the net border shall be 5,000 pounds and connections between net panels shall be as strong as integral net parts.

Section 214.107 Working Over or Adjacent to Water

Proposed Rule

The proposed rule required the use of life preservers where employees work over or near water in excess of three feet deep, or where the danger of drowning exists. The proposal also required that the preservers be

inspected prior to and after each use, and that any defective units be removed permanently from service. Ring bouys with at least 90 feet of line should be present and ready for rescue operations, and at least one lifesaving skiff made available.

Comments: The AAR, the Short Line Association, OSHA, and individuals submitted comments concerning protection from drowning. The AAR urged FRA to move the water depth threshold to at least four feet, reasoning that most or all bridge workers can stand in water four feet deep with no threat of drowning. If the particular body of water contains swift currents or dangerous rock formations, life preservers will be provided under the "danger of drowning" portion of paragraph (a). Therefore, the two clauses together would provide adequate protection.

OSHA and individual commenters urged FRA to drop the life preserver requirement altogether where employees are provided fall protection through a personal fall arrest system or safety net. They argue that requiring both would be duplicative, may decrease safety, and may be physically impossible. For instance, where employees work twelve feet above water and use fall protection as required, the chance of falling into water at all is remote, at best. Requiring a life preserver over a body harness would add no protection from drowning, may interfere with the connection at the place of attachment on the harness, or may make fastening the preserver over the harness impossible.

FRA received no comments concerning paragraph (b).

The AAR urged FRA to clarify when ring bouys are required by paragraph (c). The paragraph, as proposed, set forth only length and distance between bouys.

FRA received many comments regarding proposed paragraph (d), which required a lifesaving skiff where life vests are required. The AAR, Short Line Association, and individuals stated that this provision should be left to the discretion of the railroad or contractor. They argued that requiring the transport of a boat to remote regions is unreasonably burdensome. OSHA urged that FRA insert a provision in this paragraph that would require a daily safety assessment of the water current conditions, and if determined necessary provide that the craft be manned. Other commenters suggested that we clarify the term "skiff."

Final Rule

FRA has made several changes to this section as a result of the comments

received. First, the term "near" has been replaced by "adjacent to." FRA believes that this amendment will prevent any questions of clarification as to what constitutes "near" water. Use of the term adjacent, defined as "to share a common boundary, abut or adjoin," limits the scope of this section to only those situations where the danger of drowning truly exists.

FRA concurs with the AAR's water depth threshold reasoning with respect to paragraph (a), and the final rule now requires the use of a life preserver when working adjacent to water with a depth of four feet or more, or where the danger of drowning exists. Also, FRA agrees with the amendments OSHA urged concerning the difficulties of requiring both fall protection and life preservers. Paragraph (a) of the final rule now does not require the use of life preservers where employees are being protected by a personal fall arrest system or safety nets that meet the requirements of this subpart.

Paragraph (b) of the final rule provides an exception to the life preserver requirement when an employee is conducting an inspection of the structures below or above the bridge deck. FRA concurs with a commenter who stated that the bulk of a life preserver can inhibit movement and restrict visibility, particularly when climbing poles. Therefore, an employee will not be required to use and the railroad or contractor will not be required to provide life preservers when a worker is conducting inspections, particularly on poles above or beneath the bridge deck, in which use of the life preserver can actually decrease employee safety.

Paragraph (c) of the final rule (formerly § 218.75(b)) has been amended to require inspections of the flotation devices only prior to use. So long as these inspections are done thoroughly, FRA can find no reason to also require an inspection after use of the devices.

Paragraph (d) of the final rule (formerly § 218.75(c)) has been amended and now specifies that ring bouys are required where the use of life preservers is required, i.e. when employees are over or adjacent to water with a depth of four feet or more, or where there is a danger of drowning, and where they are not otherwise protected by a personal fall arrest system or safety net.

Paragraph (e) of the final rule (formerly § 218.75(d)) states that a skiff, inflatable boat, or equivalent device shall be available where life vests are required. This permits railroads or contractors to choose the type of device utilized according to the terrain that

must be travelled, as well as the type of water present. This discretion can therefore be used to enhance safety concerns during the haul, and at the work site. Also, the final rule now requires that where environmental conditions, including water and air temperature, wind, precipitation, water speed, and water bed terrain, merit additional protection, the life boat will be manned. This determination shall be made by a competent individual present at the work site.

Section 214.109 Scaffolding.

Proposed Rule

Proposed § 218.78 addressed requirements for scaffolding. The section was moved to this location in the final rule so that the personal protective equipment sections followed uninterrupted. Proposed paragraph (a) set forth minimum grade standards for framing and guardrails. Proposed paragraph (b) provided for guardrail size and maximum load requirements, that they not be moved or altered while occupied, and that an access ladder or equivalent device be provided. Proposed paragraph (c) set similar standards for mobile ladder stands and scaffolds.

Comments: OSHA, Maryland's Division of Industry and Labor, and Osmose Wood Preserving, Inc. (a bridge restoration company) submitted comments on this proposed section.

OSHA stated that the language in paragraph (a) requiring 1,500-fiber-grade lumber is outdated. They prefer a performance-oriented standard, which sets a four-to-one ratio of maximum intended load to failure, that is more likely to guaranty safety. Also, OSHA stated that the term "stationary" scaffolds used in proposed paragraph (b) is not a recognized scaffold industry term and suggested that it be deleted. Finally, OSHA recommended that FRA adopt performance-oriented standards of 200 pounds for guardrails and 150 pounds for midrails.

Osmose Wood Preserving urged FRA to increase the midrail sizes listed in proposed paragraphs (b)(1) and (c)(6) for added strength from one-by-four inch lumber to two-by-four inch lumber. Also, Osmose stated that mobile scaffolds should be exempted from proposed paragraph (b)(3), which prohibits the movement of scaffolds while they are occupied. As Osmose points out, mobile scaffolds are designed to move vertically while occupied and so this section should not apply.

Maryland's Division of Labor and Industry stated that our proposed scaffolding regulations were incomplete as compared to existing OSHA

regulations, and should be amended generally.

An individual commenter and OSHA also suggested that a trained or knowledgeable individual oversee scaffold design, construction, and repair.

Final Rule

FRA concurs with OSHA's comments concerning performance-oriented standards for scaffolds, guardrails, and midrails. Their most recent proposals with suggested weight thresholds have been adopted as recommended. These standards, which are functionally equivalent to the traditional size-oriented standards previously used, serve as a more accurate measure of scaffold and scaffold-component strength. By incorporating these standards, Osmose's suggestions concerning midrail size have also been adopted. Also, the term "stationary" has been deleted as a modifier of scaffold in the final rule to reflect trade usage language.

FRA concurs with Osmose Wood Preserving concerning the prohibition on movement of mobile scaffolds, and the final rule reflects this exemption in paragraph (b).

FRA agrees that scaffold design, construction, and repair should be undertaken by an individual with experience, knowledge, or advanced training in order to prevent safety hazards. Therefore, paragraph (e) of the final rule incorporates this concern.

FRA made every attempt to propose comprehensive scaffold standards. However, the final rule, although functionally similar to our proposal, has been reorganized to reflect the comments of OSHA, Maryland's Division of Labor, and Osmose Wood Preserving, Inc.

Paragraph (a) mandates that scaffolds be constructed and maintained in a safe condition, sets forth load limits and top edge heights.

Paragraph (b) (formerly paragraph (b)(3)) is adopted as proposed, with the additional exemption for mobile scaffolds.

Paragraph (c) (formerly paragraph (b)(4)) is adopted as proposed.

Paragraph (d) (formerly paragraph (c)(3)) is adopted as proposed.

Paragraph (e) requires that scaffolds be designed, constructed, and repaired by competent individuals, and describes the knowledge or experience those individuals must possess.

Paragraph (f) (formerly paragraph (c)) is adopted as proposed, adding the new performance standards for scaffolds, guardrails, and midrails.

Section 214.111 Personal Protective Equipment

Proposed Rule

Listed as § 218.79 in the proposed rule, this section proposed that railroads and their contractors require employees to wear appropriate personal protective equipment where there is an exposure to risk of injury.

Comments: The Short Line Association and the AAR expressed opposition to this requirement, as well as to those sections that cover specific devices for head, foot, eye, and face protection. The AAR stated that FRA did not present data which supports a Federal mandate for personal protective equipment. The AAR asserted that most railroad operating rules require such equipment, and therefore, the railroad labor force is amply protected by these internal rules. In addition, the AAR questioned why FRA does not also require these personal protective devices for railroad employees who do similar types of construction work in yards and shops, and postulated that it is because there is no real need for such equipment. Finally, the AAR stated that the expense of personal protective equipment is a traditional subject of collective bargaining and therefore, one that FRA should not interfere with or oversee. The Short Line Association echoed these objections, and declared that the cost of compliance would be unreasonably burdensome to most short line railroads.

The Brotherhood of Maintenance of Way Employees and OSHA supported this general duty section, as well as those sections providing for specific protective devices. In this vein, both OSHA and the BMWE suggested that FRA insert an additional section in the final rule to address hearing protection. FRA fully considered adding a section to the final rule that would have mandated adequate hearing protection for bridge workers. FRA concurs that bridge workers operating sand blasters, drills, jackhammers, and other forms of power equipment should be provided appropriate hearing protection, but believes that this is an area requiring OSHA's health-related expertise. Pertinent OSHA regulations exist and shall continue to govern these hazards. Also, because such a proposal was not set forth in the NPRM and all interested parties were not afforded the required opportunity to comment, FRA cannot go forward in the final rule with hearing protection regulations.

Final Rule

FRA believes that requiring personal protective equipment is critical to the success of any safety program for railroad bridge workers. Injury data compiled by FRA from January, 1980, through March, 1991 for bridge and building gang foremen, carpenters, ironworkers, and painters indicate that the following casualties have occurred: 9 fatalities, 20 concussions, 205 fractures to the legs or feet, 639 sprains to the legs or feet, 424 lacerations to the head or face, 259 lacerations to the legs or feet, 102 puncture wounds to the legs or feet, 14 puncture wounds to the head or face, 71 burns to the head or face, 601 instances of foreign objects in the eye, 114 contusions to the head or face, and 498 contusions to the legs or feet. While these figures include building workers as well as bridge employees, they nonetheless demonstrate a need for personal protective equipment for railroad bridge workers.

The AAR's response to our proposal for personal protective equipment declares that "most railroads" require such equipment "when appropriate." While we understand the industry's intent to be to provide sufficient protection for railroad employees, FRA believes that a national standard applicable to all railroads will more adequately respond to and reduce the injury figures listed above.

In questioning why FRA does not also require personal protective equipment for those railroad employees who work in rail yards and shops, the AAR overlooks the limited scope of this rule. Our statutory mandate in this proceeding is to determine what regulations may be necessary to address the safety hazards to railroad bridge workers. The standards and requirements promulgated in this proceeding are limited to such matters. FRA certainly does not intend to imply that such protections should not also be afforded yard and shop employees, but in fact, OSHA's regulations currently provide adequate protection in those areas.

Also, this response by the AAR implies that current applicable OSHA regulations concerning personal protective equipment are not being followed or enforced. As the preamble of the NPRM in this matter states, OSHA regulations with respect to personal protective equipment, as well as in other areas, remain in effect until promulgation of this final rule supplants those regulations with regard to certain subject matters. The plain language of the 1978 Policy Statement, which

delineates FRA and OSHA authority, so states:

OSHA regulations concerning personal protective equipment apply according to their terms, except to the extent the general requirements might be read to require protective equipment responsive to hazards growing out of railroad operations.

(43 FR 10583, 10588). Bridge workers conducting maintenance, repair, and painting tasks on railroad bridges function as traditional construction employees, and are not involved in work unique to the railroad that falls into the narrow "railroad operations" category. Also, as the Policy Statement clearly states, OSHA regulations concerning traditional construction work (defined in the Policy Statement as construction, alteration, and/or repair, including painting and decorating) shall apply (43 FR 10589).¹ Therefore, in order to assure that railroad bridge workers retain protection at least as good as what they protection than they currently have, FRA may pursue one of two options: Promulgate regulations in this Subpart mandating personal protective equipment, or leave this area in the hands of OSHA. FRA has determined that promulgating regulations on certain specific subject matters within the area of personal protection is the most efficient course to take, since use of the personal protective equipment addressed in this final rule is a reasonably straightforward safety issue that can be addressed during normal FRA safety inspections. We have tracked the OSHA language in the final rule so that the level of protection afforded railroad employees does not shift. Of course, as § 214.101(d) of the final rule provides, OSHA rules on subject matters related to the safety of railroad bridge workers but not addressed in this rule remain in effect.

In requiring personal protective equipment, FRA is not addressing the issue of who pays for it. FRA understands that payment for certain items of personal protective equipment has long been a collective bargaining issue, and FRA does not change that.

¹ The AAR cites *Templeton v. Chicago and North Western Transportation Co.*, No. 1-90-0312 (Ill. App. Ct. March 15, 1991) in support of its claim that pertinent OSHA regulations do not apply to railroad bridge workers. In that case, the Appellate Court of Illinois viewed issuance of the Policy Statement as an exercise of jurisdiction by FRA over all matters affecting railroad employees. This sweeping interpretation of the Policy Statement overlooks the plain language and intent of the statement, which clearly discerns occupational hazards that are more appropriately regulated by OSHA: those conditions that do not require FRA's specialized expertise. With respect, the Court was plainly wrong: FRA has not exercised jurisdiction over all matters affecting railroad employees either through the Policy Statement or otherwise.

Former § 218.79 of the proposed rule is therefore adopted as proposed in § 218.111 of the final rule.

Section 214.113 Head Protection

Proposed Rule

The proposed rule provided for protective helmets when a risk of injury from falling objects, impact, shock or burns existed.

Comments: For discussion of comments questioning the need to regulate head equipment, see § 214.111 above.

OSHA and individual commenters noted that our proposal did not contain the most recent American National Standards Institute (ANSI) standard.

Final Rule

The final rule cites the relevant ANSI standard currently effective. As those standards change, FRA will make technical amendments to incorporate the changes, as necessary. The final rule also requires that the equipment, when provided be used.

Section 214.115 Foot Protection

Proposed Rule

The proposed rule provided that footwear and rubber protective equipment must conform to the national consensus standards.

Comments: For discussion of comments questioning the need for protective devices, see § 214.111 above.

OSHA and individual commenters noted that the proposed section did not contain the most recent ANSI standard for footwear.

Final Rule

The final rule is adopted substantively as proposed in paragraph (b), but cites the currently effective ANSI standard. In addition, paragraph (a) of the final rule now mandates that the railroad or railroad contractor require the use of shoes meeting this standard. Based on the injury data listed above which indicates prevalent foot injuries for bridge workers, FRA has concluded that the safety interests of bridge workers will be better served by requiring safety-toe footwear.

Section 214.117 Eye and Face Protection

Proposed Rule

The proposed section mandated eye and face protection when employees face exposure to injury from physical, chemical, or radiant agents. The equipment would have to meet ANSI standards, be kept clean and in good repair, and would be altered or

accommodated as necessary for employees with corrective lenses.

Comments: For discussion questioning the need for such equipment, see § 214.111 above.

OSHA and individual commenters noted that the most recent ANSI standard was not contained in the proposal.

Final Rule

The final rule is adopted substantively without change, but cites the currently effective ANSI standard. The rule also requires that the equipment, when provided, be used.

Respiratory Protection

Proposed Rule

The proposed rule required that employees be trained on the use and limitations of respirators when such protection is necessary. Also, the proposal mandated that facial hair must be removed where it interferes with a tight fit, that the appropriate device be chosen according to contaminant exposure, and that the equipment be inspected and cleaned regularly.

Comments: FRA received comments from the BMWE, the AAR, the Short Line Association, OSHA, Maryland's Division of Labor and Industry, and individuals with respect to respiratory protection.

The BMWE, OSHA, Maryland's Division of Labor and Industry, and individual commenters strongly urged FRA to reformulate this section to include the components of the standard industrial respiratory program, as listed in OSHA's general industry standards. Those include: A written program outlining the selection and use of respirators, surveillance of work area conditions, effectiveness evaluations, determinations that employees are physically able to use the equipment, selection of respirators according to the ANSI standards, fitting practice demonstrations, random inspections, equipment inspections prior to each use, and storage and repair guidelines. These commenters asserted that by omitting these portions, or shortening them in some instances, employees would be put at serious risk. Additionally, they stated that respirator selection and fit are critical elements of a successful program, and therefore must be outlined in detail.

The AAR and Short Line Association objected to this requirement, stating that the proposal is not necessary in most circumstances, and as written would require respirator use in most metropolitan cities. The AAR suggested that FRA mandate respirator use only when employees are engaged in sand

blasting, spray painting, or using torches on lead paint.

Final Rule

In light of the complexity of respirator use and maintenance, and the dire consequences that may result from an inadequate regulatory and enforcement program, FRA has determined that respiratory protection is best governed by existing OSHA regulations.

FRA simply does not possess the expertise or personnel to adequately investigate proper fit testing, air sampling, and respirator choice according to contaminate that is required in a comprehensive respiratory protection program. OSHA is currently updating the existing standards that FRA proposed in the NPRM, so that a new and expanded rulemaking would be necessary in the near future to adequately incorporate all of the information that is only now becoming available.

Therefore, this final rule does not contain respiratory protection requirements. Existing OSHA regulations governing fit, use, maintenance, and repair of respirators and related training will apply to railroad employees.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures and is considered to be nonmajor under Executive Order 12291. It is, however, considered to be significant under DOT policies and procedures (44 FR 11304) because it would initiate a substantial regulatory program.

Consequently, FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of the rule. It may be inspected and copied at room 8209, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

This rule represents a simple transfer of regulatory jurisdiction from one Federal agency (OSHA) to another (FRA), with minor modifications appropriate to the context of railroad bridges. Based on the comments submitted, some railroads have apparently not been in full compliance with the OSHA rules, and may now incur some increased out-of-pocket expenditures. The specific extent of these expenditures cannot be determined. However, since the railroad industry is subject to the OSHA

requirements, any such expenditures are not a cost of this rule. FRA will expend about \$264,000 (the equivalent of four employee years) for its additional enforcement responsibility. Benefits will derive from the clarity of the present final rule and increased enforcement. While the extent of actual benefits realized again cannot be quantified at this time, the agency believes that the benefits of the rule will outweigh its costs.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. In reviewing the economic impact of the rule, FRA concluded that it will have a minimal economic impact on a minor number of small entities. There is no direct or indirect economic impact on small units of government, businesses, or other organizations. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. State rail agencies remain free to participate in the administration of FRA's rules but are not required to do so.

Paperwork Reduction Act

This rule has an information collection requirement in § 214.105(c) stating that when a drop test is not feasible, a designated person must certify that the net and its installation are in compliance with the provisions of the Bridge Worker Safety Rules. FRA is submitting this information collection requirement to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980. The public reporting burden for this collection of information is estimated to average two minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Gloria D. Swanson, Office of Safety, RRS-21, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for FRA (OMB No. 2130-New), 726 Jackson Place, NW., Washington, DC 20503. Copies of any such comments should also be submitted to the docket

of this rulemaking at the address provided above.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) other environmental statutes, Executive Orders, and DOT Order 5610.1c. These regulations meet criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

This rule will not have a substantial effect 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad operating practices, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA adds part 214, title 49, Code of Federal Regulations to read as follows:

PART 214—RAILROAD WORKPLACE SAFETY

Subpart A—General

- 214.1 Purpose and scope.
- 214.3 Application.
- 214.5 Responsibility for compliance.
- 214.7 Definitions.

Subpart B—Bridge Worker Safety Standards

- 214.101 Purpose and scope.
- 214.103 Fall protection, generally.
- 214.105 Fall protection systems standards and practices.
- 214.107 Working over or adjacent to water.
- 214.109 Scaffolding.
- 214.111 Personal protective equipment, generally.
- 214.113 Head protection.
- 214.115 Foot protection.
- 214.117 Eye and face protection.

Appendix A to Part 214—Schedule of Civil Penalties

Authority: 45 U.S.C. 431, 438, as amended; 49 CFR 1.49(m).

Subpart A—General

§ 214.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties to employees involved in certain railroad

inspection, maintenance and construction activities.

(b) This part prescribes minimum Federal safety standards for the railroad workplace safety subjects addressed herein. This part does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 214.3 Application.

This part applies to railroads that operate rolling equipment on track that is part of the general railroad system of transportation.

§ 214.5 Responsibility for compliance.

Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad or railroad contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$250 and not more than \$10,000 per violation, except that penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed \$20,000 per violation may be assessed. See appendix A to this part for a statement of agency civil penalty policy.

§ 214.7 Definitions.

(a) *Anchorage* means a secure point of attachment for lifelines, lanyards or deceleration devices that is independent of the means of supporting or suspending the employee.

(b) *Body belt* means a strap that can be secured around the waist or body and attached to a lanyard, lifeline, or deceleration device.

(c) *Body harness* means a device with straps that is secured about the employee in a manner so as to distribute the fall arrest forces over (at least) the thighs, shoulders, pelvis, waist, and chest and that can be attached to a lanyard, lifeline, or deceleration device.

(d) *Competent person* means one who is capable of identifying existing and predictable hazards in the workplace and who is authorized to take prompt corrective measures to eliminate them.

(e) *Deceleration device* means any mechanism, including, but not limited to, rope grabs, ripstitch lanyards, specially woven lanyards, tearing or deforming lanyards, and automatic self-retracting lifelines/lanyards that serve to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy on an employee during fall arrest.

(f) *Equivalent* means alternative designs, materials, or methods that the railroad or railroad contractor can demonstrate will provide equal or greater safety for employees than the means specified in this part.

(g) *Free fall* means the act of falling before the personal fall arrest system begins to apply force to arrest the fall.

(h) *Free fall distance* means the vertical displacement of the fall arrest attachment point on the employee's body belt or body harness between onset of the fall and the point at which the system begins to apply force to arrest the fall. This distance excludes deceleration distance and lifeline and lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

(i) *Lanyard* means a flexible line of rope, wire rope, or strap that is used to secure a body belt or body harness to a deceleration device, lifeline, or anchorage.

(j) *Lifeline* means a component of a fall arrest system consisting of a flexible line that connects to an anchorage at one end to hang vertically (vertical lifeline) or to an anchorage at both ends to stretch horizontally (horizontal lifeline), and that serves as a means for connecting other components of a personal fall arrest system to the anchorage.

(k) *Personal fall arrest system* means a system used to arrest the fall of an employee from a working level. It consists of an anchorage, connectors, body harness or body belt, lanyard, deceleration device, lifeline, or combination of these.

(l) *Railroad* means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high-speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(m) *Railroad employee or employee* as used in Subpart B means any employee of, or employee of a contractor of, a railroad owning or responsible for the construction, inspection, testing, or maintenance of a bridge whose assigned duties, if performed on the bridge, include inspection, testing, maintenance, repair,

construction, or reconstruction of the track, bridge structural members, operating mechanisms and water traffic control systems, or signal, communication, or train control systems integral to that bridge.

(n) *Railroad bridge* means a structure supporting one or more railroad tracks above land or water with a span length of 12 feet or more measured along the track centerline. This term applies to the entire structure between the faces of the backwalls of abutments or equivalent components, regardless of the number of spans, and includes all such structures, whether of timber, stone, concrete, metal, or any combination thereof.

(o) *Self-retracting lifeline/lanyard* means a deceleration device that contains a drum-wound line that may be slowly extracted from, or retracted onto, the drum under slight tension during normal employee movement, and which, after onset of a fall, automatically locks the drum and arrests the fall.

(p) *Snap-hook* means a connector comprised of a hook-shaped member with a normally closed keeper, that may be opened to permit the hook to receive an object and, when released, automatically closes to retain the object.

Subpart B—Bridge Worker Safety Standards

§ 214.101 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties arising from the performance of work on railroad bridges.

(b) This subpart prescribes minimum railroad safety rules for railroad employees performing work on bridges. Each railroad and railroad contractor may prescribe additional or more stringent operating rules, safety rules, and other special instructions not inconsistent with this subpart.

(c) These provisions apply to all railroad employees, railroads, and railroad contractors performing work on railroad bridges.

(d) Any working conditions involving the protection of railroad employees working on railroad bridges not within the subject matter addressed by this Chapter, including respiratory protection, hazard communication, hearing protection, welding and lead exposure standards, shall be governed by the regulations of the U.S. Department of Labor, Occupational Safety and Health Administration.

§ 214.103 Fall protection, generally.

(a) Except as provided in paragraphs (b) through (d) of this section, when employees work twelve feet or more above the ground or water surface, they

shall be provided and shall use a personal fall arrest system or safety net system. All fall protection systems required by this section shall conform to the standards set forth in § 214.105 of this subpart.

(b) This section shall not apply if the installation of the fall arrest system poses a greater exposure to risk than the work to be performed. In any action brought by FRA to enforce the fall protection requirements, the railroad or railroad contractor shall have the burden of proving that the installation of such device poses greater exposure to risk than performance of the work itself.

(c) This section shall not apply where employees are working on a railroad bridge equipped with walkways, toeboards, and railings of sufficient height, width, and strength to prevent a fall, so long as employees do not work beyond the railings, over the side of the bridge, on ladders or other elevation devices, or where gaps or holes exist through which a body could fall. Where used in place of fall protection as provided for in 214.105, walkways and railings meeting standards set forth in the American Railway Engineering Association's Manual For Railway Engineering satisfy this subsection. Toeboards must be at least four inches in height.

(d) This section shall not apply where employees are performing repairs or inspections of a minor nature that are completed by working exclusively between the outside rails, including, but not limited to, routine welding, spiking, anchoring, spot surfacing, and joint bolt replacement.

§ 214.105 Fall protection systems standards and practices.

(a) *General Requirements.* All fall protection systems required by this subpart shall conform to the following:

(1) Fall protection systems shall be used only for employee fall protection.

(2) Any fall protection system subjected to impact loading shall be immediately and permanently removed from service unless fully inspected and determined by a competent person to be undamaged and suitable for reuse.

(3) All fall protection system components shall be protected from abrasions, corrosion, or any other form of deterioration.

(4) All fall protection system components shall be inspected prior to each use for wear, damage, corrosion, mildew, and other deterioration. Defective components shall be permanently removed from service.

(5) Prior to use and after any component or system is changed, employees shall be trained in the

application limits of the equipment, proper hook-up, anchoring and tie-off techniques, methods of use, and proper methods of equipment inspection and storage.

(6) The railroad or railroad contractor shall provide for prompt rescue of employees in the event of a fall.

(7) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of the system.

(8) Connectors shall be drop forged, pressed or formed steel, or made of equivalent-strength materials.

(9) Anchorages, including single- and double-head anchors, shall be capable of supporting at least 5,000 pounds per employee attached, or shall be designed, installed, and used under the supervision of a qualified person as part of a complete personal fall protection system that maintains a safety factor of at least two.

(b) *Personal fall arrest systems.* All components of a personal fall arrest system shall conform to the following standards:

(1) Lanyards and vertical lifelines that tie off one employee shall have a minimum breaking strength of 5,000 pounds.

(2) Self-retracting lifelines and lanyards that automatically limit free fall distance to two feet or less shall have components capable of sustaining a minimum static tensile load of 3,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(3) Self-retracting lifelines and lanyards that do not limit free fall distance to two feet or less, ripstitch, and tearing and deformed lanyards shall be capable of withstanding 5,000 pounds applied to the device with the lifeline or lanyard in the fully extended position.

(4) Horizontal lifelines shall be designed, installed, and used under the supervision of a competent person, as part of a complete personal fall arrest system that maintains a safety factor of at least two.

(5) Lifelines shall not be made of natural fiber rope.

(6) The personal fall arrest system shall limit the maximum arresting force on an employee to 900 pounds when used with a body belt.

(7) The personal fall arrest system shall limit the maximum arresting force on an employee to 1,800 pounds when used with a body harness.

(8) The personal fall arrest system shall bring an employee to a complete stop and limit maximum deceleration distance an employee travels to 3.5 feet.

(9) The personal fall arrest system shall have sufficient strength to withstand twice the potential impact energy of an employee free falling a distance of six feet, or the free fall distance permitted by the system, whichever is less.

(10) The personal fall arrest system shall be arranged so that an employee cannot free fall more than six feet and cannot contact the ground or any lower horizontal surface of the bridge.

(11) Personal fall arrest systems shall be worn with the attachment point of the body belt located in the center of the wearer's back, and the attachment point of the body harness located in the center of the wearer's back near shoulder level, or above the wearer's head.

(12) When vertical lifelines are used, each employee shall be provided with a separate lifeline.

(13) Devices used to connect to a horizontal lifeline that may become a vertical lifeline shall be capable of locking in either direction.

(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 3,600 pounds without cracking, breaking, or taking permanent deformation.

(15) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 5,000 pounds.

(16) Snap-hooks shall not be connected to each other.

(17) Snap-hooks shall be dimensionally compatible with the member to which they are connected to prevent unintentional disengagement, or shall be a locking snap-hook designed to prevent unintentional disengagement.

(18) Unless of a locking type, snap-hooks shall not be engaged:

(i) Directly next to webbing, rope, or wire rope;

(ii) To each other;

(iii) To a dee-ring to which another snap-hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object that is incompatibly shaped or dimensioned in relation to the snap-hook so that unintentional disengagement could occur.

(c) *Safety net systems.* Use of safety net systems shall conform to the following standards and practices:

(1) Safety nets shall be installed as close as practicable under the walking/working surface on which employees are working, but shall not be installed more than 30 feet below such surface.

(2) If the distance from the working surface to the net exceeds 30 feet, employees shall be protected by personal fall arrest systems.

(3) The safety net shall be installed such that any fall from the working surface to the net is unobstructed.

(4) Except as provided in this subsection, safety nets and net installations shall be drop-tested at the jobsite after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at six-month intervals if left in one place. The drop-test shall consist of a 400-pound bag of sand 30 inches, plus or minus two inches, in diameter dropped into the net from the highest (but not less than 3½ feet) working surface on which employees are to be protected.

(i) When the railroad or railroad contractor demonstrates that a drop-test is not feasible and, as a result, the test is not performed, the railroad or railroad contractor, or designated competent person, shall certify that the net and its installation are in compliance with the provisions of this section by preparing a certification record prior to use of the net.

(ii) The certification shall include an identification of the net, the date it was determined that the net was in compliance with this section, and the signature of the person making this determination. Such person's signature shall certify that the net and its installation are in compliance with this section. The most recent certification for each net installation shall be available at the jobsite where the subject net is located.

(5) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test specified in this section.

(6) The safety net shall be installed such that there is no contact with surfaces or structures below the net when subjected to an impact force equal to the drop test specified in this section.

(7) Safety nets shall extend outward from the outermost projection of the work surface as follows:

(i) When the vertical distance from the working level to the horizontal plane of the net is 5 feet or less, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 8 feet.

(ii) When the vertical distance from the working level to the horizontal plane of the net is more than 5 feet, but less than 10 feet, the minimum required horizontal distance of the outer edge of the net beyond the edge of the working surface is 10 feet.

(iii) When the vertical distance from the working level to the horizontal plane of the net is more than 10 feet, the minimum required horizontal distance of

the outer edge of the net beyond the edge of the working surface is 13 feet.

(8) Defective nets shall not be used. Safety nets shall be inspected at least once a week for mildew, wear, damage, and other deterioration. Defective components shall be removed permanently from service.

(9) Safety nets shall be inspected after any occurrence that could affect the integrity of the safety net system.

(10) Tools, scraps, or other materials that have fallen into the safety net shall be removed as soon as possible, and at least before the next work shift.

(11) Each safety net shall have a border rope for webbing with a minimum breaking strength of 5,000 pounds.

(12) The maximum size of each safety net mesh opening shall not exceed 36 square inches and shall not be longer than 6 inches on any side measured center-to-center of mesh ropes or webbing. All mesh crossing shall be secured to prevent enlargement of the mesh opening.

(13) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than 6 inches apart.

§ 214.107 Working over or adjacent to water.

(a) Employees working over or adjacent to water with a depth of four feet or more, or where the danger of drowning exists, shall be provided and shall use life vests or buoyant work vests in compliance with U.S. Coast Guard requirements in 46 CFR 160.047, 160.052, in 160.053. Life preservers in compliance with U.S. Coast Guard requirements in 46 CFR 160.055 shall also be within ready access. This section shall not apply to employees using personal fall arrest systems or safety nets that comply with this Subpart.

(b) Life vests or buoyant work vests shall not be required when employees are conducting inspections that involve climbing structures above or below the bridge deck.

(c) Prior to each use, all flotation devices shall be inspected for defects that reduce their strength or buoyancy by designated individuals trained by the railroad or railroad contractor. Defective units shall not be used.

(d) Where life vests are required by paragraph (a) of this section, ring buoys with at least 90 feet of line shall be provided and readily available for emergency rescue operations. Distance between ring buoys shall not exceed 200 feet.

(e) Where life vests are required, at least one lifesaving skiff, inflatable boat, or equivalent device shall be immediately available. If it is determined by a competent person that environmental conditions, including weather, water speed, and terrain, merit additional protection, the skiff or boat shall be manned.

§ 214.109 Scaffolding.

(a) Scaffolding used in connection with railroad bridge maintenance, inspection, testing, and construction shall be constructed and maintained in a safe condition and meet the following minimum requirements:

(1) Each scaffold and scaffold component, except suspension ropes and guardrail systems, but including footings and anchorage, shall be capable of supporting, without failure, its own weight and at least four times the maximum intended load applied or transmitted to that scaffold or scaffold component.

(2) Guardrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds applied within two inches of the top edge, in any outward or downward direction, at any point along the top edge.

(3) Top edge height of top rails, or equivalent guardrail system member, shall be 42 inches, plus or minus three inches. Supports shall be at intervals not to exceed eight feet. Toeboards shall be a minimum of four inches in height.

(4) Midrails, screens, mesh, intermediate vertical members, solid panels, and equivalent structural members shall be capable of withstanding, without failure, a force of at least 150 pounds applied in any downward or outward direction at any point along the midrail or other member.

(5) Midrails shall be installed at a height midway between the top edge of the guardrail system and the walking/working level.

(b) Scaffolds shall not be altered or moved while they are occupied. This paragraph does not apply to vertical movements of mobile scaffolds that are designed to move vertically while occupied.

(c) An access ladder or equivalent safe access shall be provided.

(d) All exposed surfaces shall be prepared and cleared to prevent injury due to laceration, puncture, tripping, or falling hazard.

(e) All scaffold design, construction, and repair shall be completed by competent individuals trained and knowledgeable about design criteria, intended use, structural limitations, and procedures for proper repair.

(f) Manually propelled mobile ladder stands and scaffolds shall conform to the following:

(1) All manually propelled mobile ladder stands and scaffolds shall be capable of carrying the design load.

(2) All ladder stands, scaffolds, and scaffold components shall be capable of supporting, without failure, displacement, or settlement, its own weight and at least four times the maximum intended load applied or transmitted to that ladder stand, scaffold, or scaffold component.

(3) All exposed surfaces shall be free from sharp edges or burrs.

(4) The maximum work level height shall not exceed four times the minimum or least base dimensions of any mobile ladder stand or scaffold. Where the basic mobile unit does not meet this requirement, suitable outrigger frames shall be employed to achieve this least base dimension, or equivalent provisions shall be made to guy or brace the unit against tipping.

(5) The minimum platform width for any work level shall not be less than 20 inches for mobile scaffolds (towers). Ladder stands shall have a minimum step width of 16 inches. The steps of ladder stands shall be fabricated from slip resistant treads.

(6) Guardrails and midrails shall conform to the requirements listed in paragraph (a) of this section.

(7) A climbing ladder or stairway shall be provided for proper access and egress, and shall be affixed or built into the scaffold and so located that in its use it will not have a tendency to tip the scaffold.

(8) Wheels or casters shall be capable of supporting, without failure, at least four times the maximum intended load applied or transmitted to that component. All scaffold casters shall be provided with a positive wheel and/or swivel lock to prevent movement. Ladder stands shall have at least two of the four casters and shall be of the swivel type.

§ 214.111 Personal protective equipment, generally.

The railroad or railroad contractor shall provide and the employee shall use appropriate personal protective equipment described in this subpart in all operations where there is exposure to hazardous conditions, or where this subpart indicates the need for using such equipment to reduce the hazards to railroad employees.

§ 214.113 Head protection.

(a) Railroad employees working in areas where there is a possible danger of head injury from impact, or from

falling or flying objects, or from electrical shock and burns, shall be provided and shall wear protective helmets.

(b) Helmets for the protection of railroad employees against impact and penetration of falling and flying objects shall conform to the national consensus standards for industrial head protection (American National Standards Institute, Z89.1-1969, Safety Requirements for Industrial Head Protection).

(c) Helmets for the head protection of railroad employees exposed to high voltage electrical shock and burns shall conform to the national consensus standards (American National Standards Institute, Z89.2-1971).

§ 214.115 Foot protection.

(a) The railroad or railroad contractor shall require railroad employees to wear foot protection equipment when potential foot injury may result from impact, falling or flying objects, electrical shock or burns, or other hazardous condition.

(b) Safety-toe footwear for railroad employees shall conform to the national consensus standards for safety-toe footwear (American National Standards Institute, American National Standard for Men's Safety-Toe Footwear, Z41.1-1967).

§ 214.117 Eye and face protection.

(a) Railroad employees shall be provided and shall wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

(b) Eye and face protection equipment required by this section shall conform to the national consensus standards for occupational and educational eye and face protection (American National Standards Institute, Z87.1-1968, Practice for Occupational and Educational Eye and Face Protection).

(c) Face and eye protection equipment required by this section shall be kept clean and in good repair. Use of equipment with structural or optical defects is prohibited.

(d) Railroad employees whose vision requires the use of corrective lenses, when required by this regulation to wear eye protection, shall be protected by goggles or spectacles of one of the following types:

(i) Spectacles whose protective lenses provide optical correction the frame of which includes shielding against objects reaching the wearer's eyes around the lenses;

(ii) Goggles that can be worn over corrective lenses without disturbing the adjustment of the lenses; or

(iii) Goggles that incorporate corrective lenses mounted behind the protective lenses.

APPENDIX A TO PART 214.—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful
Subpart B—Bridge Worker Safety Standards		
214.103 Fall protection:		
(i) Failure to provide fall protection.....	\$5,000	\$10,000
(ii) Failure to use fall protection.....		2,500
214.105 Standards and practices:		
(a) General:		
(1) Fall protection used for other purposes.....	2,500	5,000
(2) Failure to remove from service.....	2,500	5,000
(3) Failure to protect from deterioration.....	2,500	5,000
(4) Failure to inspect and remove.....	5,000	10,000
(5) Failure to train.....	5,000	10,000
(6) Failure to provide for prompt rescue.....	5,000	10,000
(7) Failure to prevent damage.....	2,500	5,000
(8) Failure to use proper connectors.....	2,500	5,000
(9) Failure to use proper anchorages.....	2,500	5,000
(b) Fall arrest system:		
(1)-(17) Failure to provide conforming equipment.....	2,500	5,000
(c) Safety net systems:		
(1) Failure to install close to workplace.....	2,500	5,000
(2) Failure to provide fall arrest if over 30 feet.....	5,000	10,000
(3) Failure to provide for unobstructed fall.....	5,000	\$10,000
(4) Failure to test.....	2,500	5,000
(5) Failure to use proper equipment.....	2,500	5,000
(6) Failure to prevent contact with surface below.....	5,000	10,000
(7) Failure to properly install.....	5,000	10,000
(8) Failure to remove defective nets.....	5,000	10,000
(9) Failure to inspect.....	5,000	10,000
(10) Failure to remove objects.....	1,000	2,500
(11)-(13) Failure to use conforming equipment.....	2,500	10,000
214.107 Working over water:		
(a)(i) Failure to provide life vest.....	5,000	10,000
(ii) Failure to use life vest.....		1,500
(c) Failure to inspect.....	2,500	5,000
(e)(i) Failure to provide ring buoys.....	5,000	10,000
(ii) Failure to use ring buoys.....		1,500
(f)(i) Failure to provide skiff.....	1,000	2,500
(ii) Failure to use skiff.....		1,500
214.109 Scaffolding:		
(a)-(f) Failure to provide conforming equipment.....	2,500	5,000
214.113 Head protection:		
(a)(i) Failure to provide.....	2,500	5,000
(ii) Failure to use.....		1,500
(b) or (c) Failure to provide conforming equipment.....	2,500	5,000
214.115 Foot protection:		
(a)(i) Failure to require use of.....	2,500	5,000
(ii) Failure to use.....		1,500
214.117 Eye and face protection:		
(a)(i) Failure to provide.....	2,500	5,000
(ii) Failure to use.....		1,500
(b) Failure to use conforming equipment.....	2,500	5,000
(c) Use of defective equipment.....	2,500	5,000
(d) Failure to provide for corrective lenses.....	2,500	5,000

¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Issued in Washington, DC on June 16, 1992.

Gilbert E. Carmichael,

Federal Railroad Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 920124-2024]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reduction in bag limit.

SUMMARY: NMFS issues this notice to (1) reduce the daily catch limit in the Angling category from two to one Atlantic bluefin tuna per person for fish less than 77 inches (196 cm); and (2) reduce the daily vessel limit for medium Atlantic bluefin tuna from two to one. This action is necessary to improve management of the angling sector, which in recent years has exceeded the assigned annual quota. The intent of this action is to extend the fishing season and help ensure that the United States fulfills its obligations to conserve and