



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA-2019-0074]

RIN 2130-AC78

Railroad Workplace Safety

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

ACTION: Final rule.

SUMMARY: FRA is revising its regulations governing railroad workplace safety to: allow for the use of alternative cybersecurity standards for electronic display systems used to view track authority information for roadway worker safety, and exempt certain remotely operated roadway maintenance machines from existing heating, ventilation, and air conditioning (HVAC) requirements for enclosed cabs.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Executive Summary

To ensure that regulations remain current and effective for their intended purpose, agencies periodically review and propose amendments to their regulations. Within this context, FRA reviewed its 49 CFR part 214—Railroad Workplace Safety regulations. As a result of this review, on December 11, 2020, FRA published a notice of proposed rulemaking (NPRM) proposing two amendments to subparts C and D of part 214 addressing Roadway Worker Protection and On-Track Roadway Maintenance Machines and Hi-Rail Vehicles, respectively. 85 FR 79973. First, FRA proposed to revise § 214.322 (*Exclusive track occupancy, electronic display*) to allow the use of alternative cybersecurity standards for electronic display systems used to view track authority information. Second, FRA proposed to revise § 214.505 (*Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs*) to exempt certain remotely operated maintenance machines from existing HVAC requirements.

FRA believes these provisions provide flexibility to allow for the incorporation of new and future technological advances that may further improve safety. FRA received two comments, both supporting the NPRM’s proposals. Accordingly, in this final rule, FRA is adopting the NPRM’s proposed amendments to part 214 as proposed.¹ Given that this final rule will relieve current regulatory restrictions, in accordance with 5 U.S.C. 553(d)(1), it is effective upon its publication in the *Federal Register*.

FRA estimates that railroads would experience approximately \$5,900 in paperwork reduction benefits over the ten-year period of this analysis. The present value (PV)² of these paperwork reduction benefits, when discounted at 3- and 7-percent, is

¹ The final rule adopts the amendments exactly as proposed in the NPRM, with the single exception of the term “drone” being replaced with the phrase “remotely operated” in the amendment to § 214.505, for increased clarity, as explained below.

² The present value of costs and paperwork reduction benefits flows are calculated in this analysis (over a 10-year period) to provide a way of converting future amounts into equivalent dollars today. The formula used to calculate these flows is: $1/(1+r)^t$, where “r” is the discount rate, and “t” is the year. Discount rates of 3 and 7 percent are used in this analysis.

approximately \$5,000 and \$4,100, respectively. The annualized paperwork reduction benefits are estimated to be approximately \$590 at both discount rates. The table below presents the estimated 10-year total paperwork reduction benefits associated with the final rule.

Table I-1: Total 10-Year Paperwork Reduction Benefits (2020 Dollars)

	Present Value 3%	Present Value 7%	Annualized 3%	Annualized 7%
Total Paperwork Reduction Benefits	\$ 5,207	\$ 4,272	\$ 610	\$ 608

Because this final rule provides railroads the flexibility to utilize alternative cybersecurity standards for electronic display systems at their discretion, and codifies an existing waiver, FRA concludes that there are no associated costs.

II. Discussion of Comments

As noted above, FRA received two comments in response to the NPRM, both supportive of the NPRM’s proposals.

The Association of American Railroads and the American Short Line and Regional Railroad Association jointly filed a comment concurring with both NPRM proposals. Regarding FRA’s proposal to revise § 214.322, the joint comment stated: “Standards incorporated by reference pose challenges both for railroads and regulators alike as they often quickly become outdated. FRA’s approach [in the NPRM] does not substantively change the electronic authentication technology that can be used by railroads and avoids the need for unnecessary waivers from obsolete standards.”

The second comment, from a member of the public, expressed support for the NPRM’s proposals, noting that the proposals would allow for the utilization of new technology and improve safety.

III. Background and Overview of the Final Rule

Exclusive Track Occupancy Track Authority Electronic Display Systems

As explained in the NPRM, when a roadway worker or work group establishes exclusive track occupancy working limits, and an electronic display device is used to view track authority information for that worker or work group, § 214.322(h) requires the device to provide “Level 3 assurance” as defined by the security standards of the National Institute of Standards and Technology (NIST) Special Publication 800-63-2, Electronic Authentication Guideline, “Computer Security,” August 2013 (2013 Standard). “Level 3 assurance” means the display devices must provide multi-factor remote network authentication (for example, a password or a biometric factor, such as a fingerprint, used in combination with a software or hardware token).

As also noted in the NPRM, since adoption of § 214.322(h), NIST has updated its computer security standards several times. *See* 85 FR 79975 (identifying updates to the 2013 Standard). Further, FRA recognizes that as cybersecurity standards continue to change over time, other standards may also provide multi-factor authentication. Accordingly, FRA proposed to provide additional flexibility for meeting the electronic authentication requirements of § 214.322(h) by adding a new paragraph (i) to the section. As proposed and adopted in this final rule, new paragraph (i) provides that paragraph (h)’s requirements may be satisfied so long as an electronic display system uses multi-factor authentication.

Remotely Operated Machine Waiver Incorporation

As discussed in detail in the NPRM, FRA may waive compliance with its regulations if the waiver is “in the public interest and consistent with railroad safety.” 49 U.S.C. 20103(d); *see also* 49 CFR 1.89(a). As also noted in the NPRM, activity under a waiver of regulatory compliance may generate sufficient data and experience to support an expansion of its scope, applicability, and duration.

As also explained in the NPRM, in 2008, FRA granted a waiver from the environmental control requirements of § 214.505(a) (such as heating, air conditioning,

and ventilation systems) to Harsco Track Technologies, a railroad equipment manufacturer for a newly developed roadway maintenance machine (RMM) designed to function without a dedicated operator located on the machine. *See* FRA-2008-0070 (available at www.regulations.gov). Railroads have safely operated equipment subject to this waiver since 2008 and the waiver has been continually renewed. Accordingly, in this final rule, FRA is adopting the NPRM's proposal to incorporate the provisions of this waiver into regulation in new paragraph (i) of § 214.505.

IV. Section-by-Section Analysis

Section 214.322 Exclusive Track Occupancy, Electronic Display.

As discussed above and in more detail in the NPRM, this final rule adds a new paragraph (i) to § 214.322. New paragraph (i) allows the use of alternative electronic security standards that provide multi-factor authentication, other than the currently required 2013 NIST Standard. With this flexibility to use alternative standards, FRA expects industry may be able to use new methods of electronic authentication that are more secure than those described by the 2013 Standard; more secure authentication methods in turn would make it more difficult for any malicious actors to access track authority information, and thus more difficult to interfere with roadway work. FRA

therefore believes this amendment in particular could lead to increased safety for roadway workers.

Because FRA is adopting the proposed amendment to § 214.322 exactly as proposed in the NPRM, FRA refers readers to the section-by-section discussion in the NPRM for a more detailed discussion of this revision.

Section 214.505 Required Environmental Control and Protection Systems for New On-track Roadway Maintenance Machines with Enclosed Cabs.

As discussed above and in more detail in the NPRM, this final rule adds a new paragraph (i) to § 214.505. New paragraph (i) exempts certain remotely operated RMMs from existing HVAC requirements.

The substance of the amendment adopted in the final rule is the same as that proposed in the NPRM; however, FRA has decided to use the term “remotely operated” instead of “drone” when describing the RMMs at issue, to avoid confusion with the usage of the term “drone” in other contexts. Because FRA is otherwise adopting the proposed amendment to § 214.505 exactly as proposed in the NPRM, FRA refers readers to the section-by-section discussion in the NPRM for a more detailed discussion of this revision.

V. Regulatory Impact and Notices

Executive Order 12866

FRA has analyzed this final rule in accordance with Section 3(f) of Executive Order 12866, “Regulatory Planning and Review” and determined that it is not a significant rule.

FRA is revising its regulations governing the minimum safety requirements for railroad workplace safety. These changes amend part 214 to permit the use of alternative security standards for electronic display systems used to view track authority information in § 214.322, and, consistent with an existing waiver, exempt certain remotely operated

RMMs from environmental control requirements in § 214.505(a), which include heating, air conditioning, and ventilation systems.

Costs

Electronic Display Systems

Section 214.322(h) requires that electronic display systems used to view track authority information meet the security standards defined by NIST Special Publication 800-63-2, Electronic Authentication Guideline, “Computer Security,” August 2013. FRA is allowing electronic display systems subject to § 214.322 to use alternative standards for electronic authentication, provided those systems require stringent identity proofing through multi-factor authentication. FRA expects no additional costs for this requirement as it is simply adding flexibility.

HVAC Waiver Incorporation

As discussed above, in 2008, FRA approved Harsco’s waiver petition for a five-year period with conditions and has since continually renewed the waiver. FRA expects no additional costs for this requirement because FRA is codifying a long-standing waiver.

Benefits

The final rule will be beneficial for regulated entities seeking to use electronic display systems that meet alternative cybersecurity standards for electronic authentication and provide a comparable or better level of identity proofing and digital authentication as that required by the 2013 NIST Standard. The final rule will also reduce the paperwork burden on regulated entities by providing relief from submitting waivers to FRA for the use of certain roadway maintenance machines.

FRA has estimated that paperwork reduction benefits of this final rule will result due to waiver codification, as the final rule will reduce the need for industry to submit waivers. These estimates assume that, without the final regulation, Harsco Track Technologies will continue submitting a petition to extend the waiver every five years.

The last renewal was approved in 2018. To date, Harsco has been the sole entity requesting this waiver from FRA, and FRA does not expect any other entities to apply for similar waivers over the period of analysis.

FRA assumes that the cost for Harsco to prepare and submit each waiver would be approximately the same as it is for FRA to process it. To calculate the paperwork reduction benefits associated with this waiver, FRA estimated the labor hours required for FRA to review and approve each waiver. Table V-1 below displays the breakdown of the waiver review and submission cost for each waiver.

Table V-1: Waiver Submission Costs

Title	Pay Grade	Wage Rate	Burdened Wage Rate (Wages x 1.75)	Hours	Total Wages
FRA Field Inspector	GS-12	\$46.88	\$82.04	8	\$656.32
Administrative Assistant (Field Office)	GS-12	\$46.88	\$82.04	4	\$328.16
Administrative Assistant (DC)	GS-9	\$32.33	\$56.58	4	\$226.32
Motive Power and Equipment Specialist (DC)	GS-14	\$65.88	\$115.29	16	\$1,844.64
			Total FRA Labor Cost per Renewal Waiver		\$3,055.44

For purposes of estimating waiver costs for this analysis, FRA estimates the associated renewals that would occur over the next 10 years. Table V-2 shows the total paperwork reduction benefits for regulated entities to review and submit waivers to FRA.

Table V-2: Waiver Submissions Paperwork Reduction Benefits (2020)

Analysis Year	Number of Waivers	Paperwork Reduction Benefits (undiscounted)	Paperwork Reduction Benefits (Discounted 3%)	Paperwork Reduction Benefits (Discounted 7%)
1		\$ -	\$ -	\$ -
2		\$ -	\$ -	\$ -
3	1	\$ 3,055	\$ 2,796	\$ 2,494
4		\$ -	\$ -	\$ -
5		\$ -	\$ -	\$ -
6		\$ -	\$ -	\$ -
7		\$ -	\$ -	\$ -

8	1	\$ 3,055	\$ 2,412	\$ 1,778
9		\$ -	\$ -	\$ -
10		\$ -	\$ -	\$ -
Total		\$ 6,110	\$ 5,207	\$ 4,272

Alternatives

The final rule provides relief to regulated entities by allowing the use of alternative standards for electronic display systems to comply with § 214.322(h) and by not having to submit waivers to FRA. An alternative to the final rule would be to maintain the status quo.

If FRA does not modify § 214.322, entities will continue to use the 2013 NIST Standard as the standard for securing and transmitting data for electronic display systems. Although this standard is safe, FRA recognizes that updated standards after the 2013 NIST Standard could allow the industry to adopt newly developed technologies and methods of data transmission that are still compliant with § 214.322(h) while providing comparable, or better, levels of security.

FRA views the remotely operated RMMs subject to the existing waiver as an example of using emerging modern technology to make railroad roadway maintenance safer and more efficient. FRA has verified that waivers allowing remotely operated RMMs do not negatively impact safety because FRA has not seen an adverse impact to safety while railroads have been operating under this waiver. Therefore, issuing this final rule removes unnecessary paperwork burdens arising from avoiding petitioning for and processing waivers.

Results

FRA has estimated the paperwork reduction benefits of this final rule and displayed them in the table below.

Table V-3: Total 10-Year Paperwork Reduction Benefits (2020 Dollars)

	Present Value 3%	Present Value 7%	Annualized 3%	Annualized 7%
Total Paperwork Reduction Benefits	\$ 5,207	\$ 4,272	\$ 610	\$ 608

As noted in the table above, FRA estimates the total paperwork reduction benefits for this final rule to be approximately \$5,000 (PV, 3-percent) and \$4,100 (PV, 7-percent). The annualized paperwork reduction benefits are estimated to be approximately \$590 (PV, 3-percent) and \$590 (PV, 7-percent).

Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. FRA certified this rule in the proposed stage. FRA requested comments regarding the certification and received no comments.

This final rule directly affects all railroads, of which there are approximately 746 on the general system, and FRA estimates that approximately 93 percent of these railroads are small entities. Therefore, FRA has determined that this final rule will have an impact on a substantial number of small entities.

However, FRA has determined that the impact on entities affected by the final rule will not be significant. The effect of the final rule will be to allow railroads the flexibility to choose the optimal electronic display equipment currently in the market, with the required level of security, without having to notify or seek approval from FRA. Further, equipment manufacturers will no longer need to seek FRA approval to forego HVAC systems on a remotely operated piece of equipment, consistent with the

established safety of a longstanding waiver. FRA expects the impact of the final rule will be a reduction in the paperwork burden for railroads and manufacturers, as well as future benefits from allowing continually advancing security standards to be incorporated without a regulatory change. FRA asserts that the economic impact of the reduction in paperwork, if any, will be minimal and entirely beneficial to small railroads.

Accordingly, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

FRA is submitting the information collection requirements in this final rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.* The sections that contain the final and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section/Subject	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Dollar Cost Equivalent ³
Form FRA F 6180.119 – Part 214 Railroad Workplace Safety Violation Report.	350 Safety Inspectors	129 forms	4 hours	516 hours	\$29,412
214.307 – Railroad on-track safety programs – RR programs that comply with this part + copies at system/division headquarters.	746 railroads	276 programs + 325 copies	2 hours + 2 minutes	563 hours	\$42,788
– RR notification to FRA not less than one month before on-track safety program takes effect.	746 railroads	276 notices	20 minutes	92 hours	\$6,992
– RR amended on-track safety programs after FRA disapproval.	746 railroads	1 program	4 hours	4 hours	\$304
– RR written response in support of disapproved program	746 railroads	1 written response	20 hours	20 hours	\$1,520
214.309 – RR publication of bulletins/notices reflecting changes in on-track safety manual.	60 railroads	100 bulletins/notices	60 minutes	100 hours	\$7,600
214.311 – RR written procedure to achieve prompt and equitable resolution of good faith employee challenges.	19 railroads	5 developed procedures	2 hours	10 hours	\$760
214.317 -- On-track safety procedures, generally, for snow removal, weed spray equipment, tunnel niche or clearing by.	19 railroads	5 operating procedures	2 hours	10 hours	\$760
214.318 – Procedures established by railroads for workers to perform duties incidental to those of inspecting, testing, servicing, or repairing rolling equipment.	746 railroads	19 rules/procedures	2 hours	38 hours	\$2,888
214.320 – Roadway maintenance machines movement over signalized non-controlled track – RR request to FRA for equivalent level of protection to that provided by limiting all train and locomotive movements to restricted speed.	746 railroads	5 requests	4 hours	20 hours	\$1,520
214.322 – Exclusive track occupancy, electronic display – Written authorities/printed authority copy if electronic display fails or malfunctions.	3 Class I Railroads	1,000 written authorities	10 minutes	167 hours	\$9,519
214.329 – Train approach warning – Written designation of watchmen/lookouts.	746 railroads	26,250 designations	30 seconds	219 hours	\$16,644
214.336 – Procedures for adjacent track movements over 25 mph: notifications/watchmen/ lookout warnings.	100 railroads	10,000 notices	5 seconds	14 hours	\$798
– Procedures for adjacent track movements 25 mph or less: notifications/watchmen/ lookout warnings.	100 railroads	3,000 notices	5 seconds	4 hours	\$228

³ Throughout the tables in this document, the dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75 percent overhead charges.

214.339 – Audible warning from trains: written procedures that prescribe effective requirements for audible warning by horn and/or bells for trains.	19 railroads	19 written procedures	4 hours	76 hours	\$5,776
214.343/345/347/349/351/353/355 – Annual training for all roadway workers (RWs) – Records of training.	50,000 roadway workers	50,000 records	2 minutes	1,667 hours	\$126,692
214.503 – Notifications for non-compliant roadway maintenance machines or unsafe condition.	50,000 roadway workers	125 notices	10 minutes	21 hours	\$1,197
– Resolution procedures.	19 railroads/contractors	5 procedures	2 hours	10 hours	\$760
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.	746/200 railroads/contractors	500 lists	1 hour	500 hours	\$38,000
– Designations/additions to list.	692/200 railroads/contractors	150 additions/designations	5 minutes	13 hours	\$988
– Stenciling or marking of remotely operated roadway maintenance machine (Revised requirement).	30 remotely operated machines	10 stencils /displays	5 minutes	1 hour	\$57
214.507 – A-Built Light Weight on new roadway maintenance machines	692/200 railroads/contractors	1,000 stickers/stencils	5 minutes	83 hours	\$4,731
214.511 – Required audible warning devices for new on-track roadway maintenance machines.	692/200 railroads/contractors	3,700 identified mechanisms	5 minutes	308 hours	\$17,556
214.515 – Overhead covers for existing on-track roadway maintenance machines.	692/200 railroads/contractors	500 + 500 requests + responses	10 + 20 minutes	250 hours	\$17,423
214.517 – Retrofitting of existing on-track roadway maintenance machines manufactured on or after Jan. 1, 1991	692/200 railroads/contractors	500 stencils/displays	5 minutes	42 hours	\$2,394
214.523 – Hi-rail vehicles	692/200 railroads/contractors	5,000 records	5 minutes	417 hours	\$23,769
– Non-complying conditions.	692/200 railroads/contractors	500 tags + 500 reports	10 minutes + 15 minutes	208 hours	\$11,856
214.527 – Inspection for compliance – Repair schedules.	692/200 railroads/contractors	550 tags + 550 reports	5 minutes + 15 minutes	183 hours	\$10,431
214.533 – Schedule of repairs – Subject to availability of parts.	692/200 railroads/contractors	250 records	15 minutes	63 hours	\$4,788
Totals	746 railroads	105,751 responses	N/A	5,619 hours	\$388,151

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the

functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202-493-0440. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Wells at the following address: Hodan.Wells@dot.gov.

Federalism Implications

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

This final rule has been analyzed consistent with the principles and criteria in Executive Order 13132. This final rule will not have a substantial effect on the States or their political subdivisions; it would not impose any substantial direct compliance costs; and it would not affect the relationships between the Federal Government and the States

or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule could have preemptive effect under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and re-codified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–03. The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the “local safety or security hazard” exception to Section 20106. Moreover, the U.S. Supreme Court has held the former LIA preempts the field concerning locomotive safety. *See Napier v. Atl. Coast Line R.R.*, 272 U.S. 605 (1926), and *Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625 (2012). Therefore, it is possible States would be preempted from addressing the subjects covered by the final rule (security standards for electronic display systems used to display track authority information and HVAC systems on remotely operated machines).

Environmental Impact

FRA has evaluated this final rule consistent with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, the Council of Environmental Quality’s NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA’s NEPA implementing regulations at 23 CFR part 771, and determined that it is categorically excluded from environmental review and does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical

exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and, therefore, do not require either an EA or EIS. *See* 40 CFR 1508.4. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), “[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.”

This final rule does not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. *See* 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this final regulation and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to effect historic properties. *See* 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in use of a resource protected by Section 4(f). *See* Department of Transportation Act of 1966, as amended (Pub. L. 89-670, 80 Stat. 931); 49 U.S.C. 303.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act, 2 U.S.C. 1532, further requires that

before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. The final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year (adjusted annually for inflation), and thus preparation of such a statement is not required.

List of Subjects in 49 CFR Part 214

Occupational safety and health, Railroad safety.

The Rule

For the reasons discussed in the preamble, FRA amends part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 214—RAILROAD WORKPLACE SAFETY

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

Authority: 49 U.S.C. 20102-20103, 20107, 21301-21302, 21304, 28 U.S.C. 2461, note; and 49 CFR 1.89.

2. Amend § 214.322 by adding paragraph (i) to read as follows:

§ 214.322 Exclusive track occupancy, electronic display.

* * * * *

(i) For purposes of complying with paragraph (h) of this section, electronic display systems may use multi-factor authentication for digital authentication of the subject.

3. Amend § 214.505 by revising the introductory text of paragraph (a) and adding paragraph (i) to read as follows:

§ 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.

(a) With the exception of machines subject to paragraph (i) of this section, the following new on-track roadway maintenance machines shall be equipped with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

* * * * *

(i) Paragraph (a) of this section is not applicable to machines that are incapable of performing work functions other than by remote operation and are equipped with no operating controls (i.e., remotely operated roadway maintenance machines) if the following conditions are met.

(1) If a remotely operated roadway maintenance machine is operated from the cab of a separate machine, that separate machine must comply with paragraph (a) of this section.

(2) If a remotely operated roadway maintenance machine is operated outside of the main cab of the separate machine in a manner that will expose the operator to air contaminants, as outlined in 29 CFR 1910.1000, the employee shall be protected in compliance with 29 CFR 1910.134.

(3) No person is permitted on the remotely operated roadway maintenance machine while the equipment is operating.

(4) Each remotely operated roadway maintenance machine must be clearly identified by stenciling, marking, or other written notice in a conspicuous location on the machine indicating the potential hazards of the machine being operated from a distance or that the machine may move automatically.

Amitabha Bose,

Administrator.

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