

**Section 610 Periodic Review of
Railroad Workplace Safety
(49CFR Part 214)**

Section 610 of the Regulatory Flexibility Act (RFA) requires federal agencies to review all rules that have a significant economic impact on a substantial number of small entities within 10 years of their adoption as final rules. The purpose of this review is to determine whether such rules should be continued without change, or should be amended or rescinded to minimize their significant impact on small entities.

The Railroad Workplace Safety Regulation (49CFR Part 214) includes three subparts. Subpart A deals with the purpose and scope, application, preemptive effect, responsibility for compliance and definitions. Subpart B describes the Bridge Worker Safety Standards, while Subpart C describes the Roadway Worker Protection Standards.

The first two parts – Subpart A, General, and Subpart B, Bridge Worker Safety Standards - of the Railroad Workplace Safety Regulations, 49 CFR Part 214, were published on June 24, 1992, and became effective on August 24, 1992.

The rule was substantially amended on December 16, 1996, by adding Subpart C, Roadway Worker Protection Standards, and by adding and amending definitions to accommodate the new Subpart C. In particular, the definition of “employee” was expanded to include all railroad employees affected by 49 CFR Part 214 in its entirety, where before the term had applied only to railroad bridge workers.

The rule was revised on March 10, 1998 for the Civil Monetary Penalty Adjustment Act where FRA was required to adjust civil penalties for inflation.

Most recently, the rule was amended on January 15, 2002. These amendments eliminate a provision, which could present undue hazard to persons, and eliminate possible confusion regarding the use of various terms in the rule text. In particular, Federal Railroad Administration (FRA) is prohibiting

the use of body belts as permissible components of personal fall arrest systems, and is revising references to railroad bridge workers as “employees” to eliminate potential confusion in determining the group of persons to which the Bridge Worker Safety Standards apply.

On August 3, 2001 FRA determined that 49 CFR Part 214, Subpart B, Bridge Worker Safety Standards has a significant economic impact on a substantial number of small entities. Therefore, in accordance with Section 610 of the RFA, FRA considered the following factors when reviewing the rule, in an effort to minimize its impact on small entities:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the rule from the public;
3. The complexity of the rule;
4. The extent to which the rule overlaps, duplicates, or conflicts with other federal rules and, to the extent feasible, with state and local governmental rules; and
5. The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed since adoption of the rule.

FRA’s analysis of each of factors follows:

1. The Continued Need for the Rule:

In general, the purpose of the rule is to prevent accidents and casualties to employees involved in certain railroad inspection, maintenance and construction activities. 49 CFR Part 214, Subpart B, Bridge Worker Safety Standards, is an effective regulation that prescribes minimum railroad safety standards and provides specific procedures that employees must follow when performing work on railroad bridges. This regulation is necessary in order to provide workers with an effective system to prevent falls from heights in the unique environment that exist on railroad bridges. Prior to this rule, there was

confusion with respect to the Occupational Safety and Health Administration (OSHA) and FRA safety standards at railroad bridges. Accordingly, FRA had determined that the safety interests of railroad employees would best be served through a regulatory program of its own.

Since the adoption of the rule, four specific cases of bridge workers' fall protection have been documented. No data is available for the bridge workers fatalities except for the years of 1998, 2000 and 2001. In this period, there has been only one fatality for each of these years.

FRA is of the opinion that the low rate of injuries and fatalities at railroad bridges would be best served by the continued enforcement of 49 CFR Part 214 Subpart B, Bridge Worker Safety.

49 CFR Part 214, Subpart C, Roadway Worker Protection prescribes minimum safety standards for the protection of railroad and contractor personnel who inspect, repair and construct track, structures and signal systems along the line of a railroad.

A study entitled: "Assessment of the Effectiveness of the Federal Railroad Administration's Regulation to Protect Roadway Workers" (Horn, Raslear and Schulte, 2001) compares pre-regulation and post-regulation casualty data. The pre-regulation casualty data covers the years 1989 – 1995 for fatalities, and 1989 – 1993 for injuries. The post-regulation data covers the years 1997 – 2000 for both fatalities and injuries. For the pre-regulation time-period of 7 years there were 30 fatalities, and for the post-regulation period of 4 years there were 9 fatalities. (See Appendix). Thus, for the pre-regulation years there was an average of 4.29 fatalities per year with a standard deviation (SD) of 1.70. For the post-regulation years the average number of fatalities decreased to 2.25 per year with a SD of 0.96. Injury data also show a sharp post-regulation decline. There were 40 injuries per year, pre-regulation, and 5.75 injuries per year, post-regulation. In addition, both fatalities per year and fatalities per 200,000 employee hours per year indicate that the rule is highly effective in reducing roadway worker fatalities. The above information shows conclusively that there

is a definite need for the regulation because of the reduction in fatalities and injuries and its contribution to safety of bridge workers and roadway workers.

2. The Nature of Complaints or Comments:

Since the codification of the Bridge Worker Safety Standards, FRA staff has provided answers to railroad management and railroad workers questions with respect to the proper application of the rule to field situations. FRA headquarters staff and field inspectors routinely provide answers to questions. These queries to FRA in regard to the Bridge Worker Safety have been of a nature and frequency that is typical of other FRA regulations.

Regarding the Roadway Worker Protection, there is an ongoing extensive amount of inquiries from all concerned with respect to technical and interpretive issues. One major issue concerns personnel such as contractors when they are or they are not covered by this regulation. For example, a cable company who has an easement to cross a railroad is not covered but a company who is directly engaged by a railroad to perform similar work is covered.

One other area pertains to training of contractors. Specifically, railroads are required to have a Roadway Worker Protection program and contractors to railroads are required to conform to the program of the railroad on which their personnel are working. The regulation requires that all affected persons be trained on its applicable provisions. Generally, railroads provide training to contractors but some railroads allow contractors to perform this training themselves. Some contractors struggle on this issue. In such circumstances, FRA provides advice to small and large contractors on a continual basis regarding how to proceed in this matter.

Another issue specific to small railroads is the perceived complexity of the Roadway Worker Protection regulation and its applicability to small railroads. This is generally a technical issue and a small railroad needs to implement only the applicable portion of the regulation to their operation. However, FRA regularly provides advice with respect to this problem.

3. The Complexity of the Rule:

While drafting the rule, every attempt was made to ensure that it does not encompass those safety rules that might diminish the protection of bridge workers which are provided under OSHA. The FRA rule addresses a broad range of safety issues that confront railroad bridge workers. However, FRA bridge worker safety standards follow OSHA construction and industry standards thereby making it easy for all protection equipment used throughout general industry to be used in the railroad bridge environment.

On August 3, 2001, FRA conducted a “plain language” review of 49 CFR Part 214 to determine whether the rule could be reorganized and/or rewritten to make it easier to read, understand and use. After conducting this review, FRA determined that the rule appears to be clear, well organized, and written in plain and simple language and easy to understand by public. Also, FRA has not received any complaints or comments with regard to the rule’s complexity or in understanding the language of the rule. Therefore, FRA finds that substantial review of the rule is not necessary.

4. Rule’s Overlapping, Duplicity or Conflict with Other Federal Rules:

The Bridge Worker Safety Standards in Subpart B specifically apply only to those locations that are defined as railroad bridges. Railroad employees conducting work outside the limits of a railroad bridge are subject to the OSHA safety standards including personal protective equipment and fall protection.

In accordance with Section 610 of the RFA, FRA conducted a quick survey of federal laws and regulations that pertain to bridge worker safety standards. After conducting this survey, FRA determined that 49 CFR Part 214, Subpart B does not appear to overlap, duplicate or conflict with other federal laws and regulations.

Regarding the Roadway Worker Protection Rule, there is one issue which occasionally overlaps with 49 CFR Part 218, Subpart B, Blue Signal Protection of Workers, where roadway workers are working at the same location. Specifically,

roadway workers and mechanical employees are in different crafts. If roadway work and mechanical work is occurring in the same area, it is expected that there should be distinct safety procedures in place to protect each craft as required by 49 CFR Part 214, Subpart C, Roadway Worker Protection and 49 CFR Part 218, Subpart B, Blue Signal Protection of Workers. These two regulations differ considerably in their application in order to most effectively accommodate the manner in which employees of the two different crafts perform their work, and to provide the most effective protection in each case.

5. The Length of Time since the Rule was Evaluated:

The rule was evaluated on August 3, 2001. FRA determined and certified that it has a significant economic impact on a substantial number of small entities for 49 CFR Part 214, Subpart B, Bridge Worker Safety Standards. FRA also determined that there is no significant economic impact on a substantial number of small entities for 49 CFR Part 214, Subpart C, Roadway Worker Protection.

Impact of the Rule on Small Entities:

“Short line” and “regional railroad” are generic terms without precise definitions, generally used to refer to small and middle-sized railroads, respectively. However, a precise revenue-based definition of the various categories of U.S. railroads can be found in the regulations of the Surface Transportation Board (STB), which divide rail carriers into three classes:

- (i) Class I: Carriers with annual carrier operating revenues of \$250 million or more;
- (ii) Class II: Carriers with annual carrier operating revenues of less than \$250 million but in excess of \$20 million; and
- (iii) Class III: Carriers with annual carrier operating revenues of \$20 million or less, and all switching and terminal companies regardless of operating revenues.

The Small Business Administration (SBA) has also promulgated regulations that clarify the term “small entity” by industry. In the SBA regulations, main line railroads with 1,500 employees or fewer employees and switching or terminal establishments with 500 or fewer employees constitute “small entities”.

SBA’s classification system may be altered by federal agencies, however, provided the public has notice and an opportunity to comment. Pursuant to that authority, FRA published an interim policy statement that defines “small entities” as:

- (i) Class III railroad (as defined by STB regulations);
- (ii) Hazardous material shippers with annual operating revenues of \$20 million or less;
- (iii) Railroad contractors with annual operating revenues of \$20 million or less; and
- (iv) Commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.

FRA proposes to use this definition of “small entity” for purposes of this review, under which 562 of the approximately 700 railroads in the United States meet the definition of “small entity”.

Rule Provisions that Limit Its Impact on Small Entities

49 CFR Part 214, Subpart B prescribes minimum railroad safety rules for railroad employees performing work on bridges, while Subpart C prescribes minimum safety standards for roadway workers. There are no specific provisions in the regulation that limit its impact on small entities. However, various provisions of the regulation apply in different circumstances. For example, roadway worker protection rules for locations with frequent high speed train operations are more complex than those which normally apply to the slower, less frequent operation typical of smaller railroads. To this extent the impact of the regulation on small entities is inherently limited.

Appendix

Bridge and Roadway Workers Fatalities

Year	Bridge Workers	Roadway Workers
1989	NA	4
1990	NA	3
1991	NA	2
1992	NA	6
1993	NA	6
1994	NA	3
1995	NA	6
1996	NA	4
1997	NA	3
1998	1	3
1999	NA	1
2000	1	2
2001	1	NA

Source: Federal Railroad Administration, Department of Transportation.