

§ 180.368 Metholachlor; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

* * * * *

■ 6. In § 180.415, paragraph (b) is removed and reserved as follows:

§ 180.415 Aluminum tris (O-ethylphosphate); tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

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■ 7. In § 180.436, paragraph (b) is removed and reserved as follows:

§ 180.436 Cyfluthrin; tolerances for residues

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

* * * * *

§ 180.442 [Amended]

■ 8. In § 180.442 in the table in paragraph (b), remove the entries for peanut and potato.

■ 9. In § 180.458, paragraph (b) is removed and reserved as follows:

§ 180.458 Clethodim; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

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■ 10. In § 180.472, the table in paragraph (b) is revised to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Almond	0.05	12/31/05
Almond, hulls	4.0	12/31/05
Soybean, seed ..	1.0	12/31/06

* * * * *

§ 180.474 [Amended]

■ 11. In § 180.474, in the table in paragraph (b), remove the entry for hop.

■ 12. In § 180.476, paragraph (b) is removed and reserved as follows:

§ 180.476 Triflumizole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

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■ 13. In § 180.482, the table in paragraph (b) is revised to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Beet, garden, roots	0.3	12/31/05
Beet, garden, tops	9.0	12/31/05
Grape	3.0	12/31/05
Sweet potato, roots	0.25	12/31/05

* * * * *

■ 14. In § 180.493, paragraph (b) is removed and reserved as follows:

§ 180.493 Dimethomorph; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

* * * * *

§ 180.495 [Amended]

■ 15. In § 180.495, in the table in paragraph (b), remove the entry for cranberry.

§ 180.498 [Amended]

■ 16. In § 180.498, in the table in paragraph (b), remove the entry for chickpea, seed.

■ 17. In § 180.499, paragraph (b) is removed and reserved as follows:

§ 180.499 Propamocarb hydrochloride; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

* * * * *

■ 18. In § 180.503, paragraph (b) is removed and reserved as follows:

§ 180.503 Cymoxanil, tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

* * * * *

§ 180.507 [Amended]

■ 19. In § 180.507, the table in paragraph (b) is Amended by removing the entries for chickpea, seed; lychee; and pepper.

§ 180.510 [Amended]

■ 20. In § 180.510, in the table in paragraph (b), remove the entry for Fruit, stone, group 12.

■ 21. In § 180.532, paragraph (b) is removed and reserved as follows:

§ 180.532 Cyprodinil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

* * * * *

§ 180.535 [Amended]

■ 22. In § 180.535, in the table in paragraph (b), remove the entries, cattle, kidney; goat, kidney; grass, forage; grass, hay; hog, kidney; horse, kidney; milk and sheep, kidney.

§ 180.544 [Amended]

■ 23. In § 180.544, in the table in paragraph (b), remove the entries, corn, field, forage; corn, field, grain; corn, field, stover; and corn, oil.

■ 24. In § 180.556, paragraph (b) is removed and reserved as follows:

§ 180.556 Pymetrisone; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*
[Reserved]

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[FR Doc. 05–2614 Filed 2–9–05; 8:45 a.m.]

BILLING CODE 6560–50–S

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

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).**ACTION:** Interim final rule.**SUMMARY:** FRA is amending regulations on Railroad Workplace Safety to clarify an ambiguous provision concerning the circumstances under which life vests or buoyant work vests are required for bridge workers working over water.**DATES:** *Effective Date:* This rule becomes effective April 11, 2005.*Written Comments:* Written comments must be received no later than March 28, 2005. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.**ADDRESSES:** You may submit comments, identified by DOT DMS Docket Number FRA–2001–10426, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

- *Web site:* Go to <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Impact, below.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6320); or Anna Nassif, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6166).

SUPPLEMENTARY INFORMATION:

Public Participation

The Administrative Procedure Act (5 U.S.C. 551-559) permits an agency to dispense with notice of rulemaking when it is otherwise not required by statute and the agency "for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). FRA finds that notice and public participation are, in this case, unnecessary and contrary to the public interest for the reasons set forth below.

These amendments do not expand the scope of the rule, nor do they impose additional burdens on those covered by the rule. Moreover, FRA finds that any further delay in issuance of this rule could perpetuate confusion or

inconsistencies regarding the use of personal floatation devices in conjunction with effective fall prevention measures. FRA believes that the identification of inconsistent safety requirements and the noncontroversial nature of the amendments necessary to make the requirements consistent justify the issuance of an interim final rule. FRA will consider, however, any comments received during the post-publication comment period before it issues a final rule in this proceeding.

Background

On June 24, 1992, FRA issued Railroad Workplace Safety Regulations in 49 CFR part 214. 57 FR 28127. Subsequent amendments to that regulation have added subpart C, Roadway Worker Protection, and subpart D, On-Track Roadway Maintenance Machines and Hi-Rail Vehicles. 61 FR 65959 (December 16, 1996), 68 FR 44388 (July 28, 2003). Additional amendments have provided technical corrections and changes to improve the effectiveness of the regulation.

FRA has since received a request from the Norfolk Southern Railway Company (NS) to permit NS employees who are working on a bridge deck over water to work without a life vest or buoyant work vest under circumstances in which falls are effectively prevented. NS refers to factual situations under the present regulation, where a bridge worker who is located 12 feet or more over the ground is prevented from falling by hand rails, walkways, or acceptable work procedures and is therefore not required to use a personal fall arrest system. However, if the same circumstances prevail on a bridge over water, the bridge worker is required to wear a life vest or buoyant work vest even though the bridge worker over water may have the same safety hand rails, walkways, or acceptable work procedures in place as the bridge worker has over dry land. FRA has considered this request, and has found that the situation addressed by NS is not limited to one railroad. FRA therefore considers it advisable to provide an industry-wide resolution by issuing a technical amendment to the regulation.

The present regulation, in section 214.107, "Working over or adjacent to water" states, in part:

(a) Bridge workers 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, and 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 bridge workers 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 bridge workers are conducting inspections that involve climbing structures above or below the bridge deck.

The present regulation also provides for circumstances in which bridge workers are not required to use personal fall arrest systems or safety nets while working at heights over land because the risk of falling is minimized by components of the bridge or by suitable work procedures. In particular, section 214.103, "Fall protection, generally" states:

(a) Except as provided in paragraphs (b) through (d) of this section, when bridge workers 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)(1) This section shall not apply if the installation of the fall arrest system poses a greater 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.

(2) This section shall not apply to bridge workers engaged in inspection of railroad bridges conducted in full compliance with the following conditions:

(i) The railroad or railroad contractor has a written program in place that requires training in, adherence to, and use of safe procedures associated with climbing techniques and procedures to be used;

(ii) The bridge worker to whom this exception applies has been trained and qualified according to that program to perform bridge inspections, has been previously and voluntarily designated to perform inspections under the provision of that program, and has accepted the designation;

(iii) The bridge worker to whom this exception applies is familiar with the appropriate climbing techniques associated with all bridge structures the bridge worker is responsible for inspecting;

(iv) The bridge worker to whom this exception applies is engaged solely in moving on or about the bridge or observing, measuring and recording the dimensions and condition of the bridge and its components; and

(v) The bridge worker to whom this section applies is provided all equipment necessary to meet the needs of safety, including any specialized alternative systems required.

(c) This section shall not apply where bridge workers are working on a railroad bridge equipped with walkways and railings of sufficient height, width, and strength to prevent a fall, so long as bridge workers 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, this paragraph (c) is satisfied by:

(1) Walkways and railings meeting standards set forth in the American Railway Engineering Association's Manual for Railway Engineering; and

(2) Roadways attached to railroad bridges, provided that bridge workers on the roadway deck work or move at a distance six feet or more from the edge of the roadway deck, or from an opening through which a person could fall.

(d) This section shall not apply where bridge workers 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.

The exceptions to the requirement for a personal fall arrest system or safety net are found in paragraphs (b) through (d) of § 214.103. Sub-paragraph (b)(2), and paragraphs (c) and (d), address alternate means of fall protection. In strict application of the regulation, these exceptions may be used in appropriate circumstances by bridge workers working at heights over dry land, but do not relieve bridge workers from the requirement to use life vests or buoyant work vests when over water, even though the risk of a fall to the water is minimized.

This inconsistency was not intended. FRA is therefore issuing this technical amendment to resolve the inconsistency. This amendment will permit the exceptions in § 214.103 which presently only apply to the use of personal fall arrest systems and safety nets over dry land to also apply to the use of life vests or buoyant work vests while working over water. Including § 214.103(b)(2) and its related sub-paragraphs concerning bridge inspectors among the exceptions in § 214.107(a) makes § 214.107(b) redundant. It is therefore being deleted.

This amendment will have the effect, in a common example, of permitting a railroad track inspector, when on a bridge that is over water and equipped with effective handrails and walkways, to replace a joint bolt without having to wear a life vest or buoyant work vest, without the need to have a life preserver within ready access, and without the need for ring buoys and a boat or skiff in the water. The amendment should also have the beneficial effect of encouraging bridge owners to install effective fall prevention components on low bridges over water in order to improve labor efficiency.

Section-by-Section Analysis

Section 214.107 Working Over or Adjacent to Water

This section sets forth standards for bridge workers working over or adjacent to water. Paragraph (a) requires that bridge workers must wear life vests or buoyant work vests in compliance with various Coast Guard requirements, when working over water, except where bridge workers are working with fall arrests systems or in compliance with the provisions of § 214.103(b)(2), (c) or (d). These provisions establish exceptions to the general requirement for protection against drowning. The exceptions include situations where there is little or no risk of falling, since bridge workers are working on bridges with walkways and railings, or, when on bridges with roadways, are working more than six feet from the edge of a roadway deck or any opening through which they could fall.

Regulatory Impact

Privacy Act

Anyone is able to search the electronic form of all comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit <http://dms.dot.gov>.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This amendment clarifying the final rule has been evaluated in accordance with existing policies and procedures and is not considered significant under Executive Order 12866 or under DOT policies and procedures. The minor technical changes made in this amendment will not increase the costs or alter the benefits associated with this regulation to any measurable degree.

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. This amendment to the final rule clarifies existing requirements. The changes will have no new 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.

Paperwork Reduction Act

There are no paperwork requirements associated with this amendment of the final rule.

Environmental Impact

FRA has evaluated this amendment 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. The amendment meets the criteria establishing this as a non-major action for environmental purposes.

Federalism Implications

This amendment 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 13132, preparation of a Federalism Assessment is not warranted.

Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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).” Sec. 201. Section 202 of the Act 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 \$120,700,000 or more 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 rule issued today does not include any mandates which will result in the expenditure, in the aggregate, of \$120,700,000 or more in any one year, and thus preparation of a statement is not required.

List of Subjects in 49 CFR Part 214

Bridges, Fall arrest equipment, Incorporation by reference, Occupational safety and health,

Personal protective equipment, Railroad employees, Railroad safety.

The Interim Final Rule

■ In consideration of the foregoing, FRA amends part 214 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 214—[AMENDED]

■ 1. The authority for part 214 is revised to read as follows:

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

■ 2. Section 214.107 is revised to read as follows:

§ 214.107 Working over or adjacent to water.

(a) Bridge workers 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, and 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 bridge workers using personal fall arrest systems or safety nets that comply with this subpart or to bridge workers who are working under the provisions of § 214.103(b)(2), (c) or (d) of this subpart.

(b) 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.

(c) 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.

(d) 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.

Issued in Washington, DC, on February 2, 2005.

Robert D. Jamison,

Acting Federal Railroad Administrator.

[FR Doc. 05-2560 Filed 2-9-05; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010-4114-02; I.D. 020705A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Reduction of the Yellowtail Flounder Trip Limit for the U.S./Canada Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reduction of the Yellowtail Flounder Trip Limit for the U.S./Canada Management Area.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that the total allowable catch (TAC) for Georges Bank (GB) yellowtail flounder allocated for harvest from the U.S./Canada Management Area will be fully harvested prior to the end of the fishing year if the rate of GB yellowtail flounder harvest remains at the current level. The Regional Administrator, therefore, is reducing the GB yellowtail flounder trip limit from 15,000 lb (6,408 kg) per trip to 5,000 lb (2,268 kg) per trip for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area, effective February 9, 2005.

DATES: Effective 0001 hrs local time, February 9, 2005, through April 30, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Tasker, (978) 281-9273, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the yellowtail flounder trip limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area under specific conditions. The TAC allocation for GB yellowtail flounder for the 2004 fishing year was specified at 6,000 mt in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) (April 27, 2004, 69 FR 22906). Section 648.85(a)(3)(iv)(D) authorizes the Regional Administrator to modify certain conditions regarding the

harvesting of fish from the U.S./Canada Management Area, including trip limits for GB yellowtail flounder harvested from that area.

On October 1, 2004 (69 FR 59815), upon determination by the Regional Administrator that 85 percent of the GB yellowtail flounder TAC had been harvested, NMFS closed the Eastern U.S./Canada Area to all NE multispecies DAS vessels and prohibited all NE multispecies vessels from harvesting, possessing, or landing GB yellowtail flounder from the U.S./Canada Management Area, because of concerns that the yellowtail flounder TAC would be fully harvested or overharvested prior to the end of the fishing year. Full harvest of the TAC was anticipated due to the amount of yellowtail flounder harvested by vessels targeting yellowtail flounder in the U.S./Canada Management Area, and because of concerns regarding anticipated yellowtail flounder bycatch by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area. Additional concern was raised by the potential impact that may be caused by scallop vessels fishing in Closed Area II under the Sea Scallop Access Program implemented under Frameworks 16/39 to the Atlantic Sea Scallop/NE Multispecies FMPs. Because of these potential sources of yellowtail flounder harvest, this action was necessary to ensure that the GB yellowtail flounder TAC would not be exceeded during the 2004 fishing year.

On January 14, 2005 (70 FR 2820, January 18, 2005), under the authority of § 648.85(a)(3)(iv)(D), NMFS re-opened the Eastern U.S./Canada Area; removed the prohibition on the harvest, possession, and landing of GB yellowtail flounder by all NE multispecies vessels within the entire U.S./Canada Management Area; and established a trip limit of 15,000 lb (6,804 kg) for GB yellowtail flounder for vessels fishing in the U.S./Canada Management Area. In addition, the daily poundage limit for yellowtail flounder and cod were removed to allow vessels additional flexibility, should they need to end a trip prematurely due to an unexpected event; i.e., vessels would have the ability to retain their entire catch onboard when entering port and on their subsequent trip. This action was taken in response to data indicating that the amount of GB yellowtail flounder harvested under the Sea Scallop Access Program and the amount of GB yellowtail flounder bycatch caught by vessels targeting groundfish other than yellowtail flounder within the U.S./Canada Management Area