



**Brotherhood of
Railroad Signalmen**
W. Dan Pickett
President

**Brotherhood of
Maintenance of Way
Employees/IBT**
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Docket Operations Facility
Occupational Safety and Health Administration
U.S. Department on Labor Room N-3653
200 Constitution Ave NW, Washington DC 20210

Re: Docket No. OSHA-2015-0012, Cranes and Derricks in Construction Railroad Roadway Work.

These joint comments are filed in response to Docket No. OSHA-2015-0012, Cranes and Derricks in Construction Railroad Roadway Work. published in the Federal Register on July 19, 2018. The Brotherhood of Railroad Signalmen (BRS) and the Brotherhood of Maintenance of Way Employees Division-Teamster Rail Conference (BMWED) ("Labor Organizations") are duly accredited Labor Organizations representing over 45,000 Roadway Workers nationwide. The individual undersigned Organizations and collective memberships have a direct safety interest in the outcome of this rulemaking. The Labor Organizations routinely work with the Association of American Railroads (AAR) and Occupational Safety and Health Administration (OSHA) in the rulemaking process and, as always, welcome the opportunity to provide constructive comments.

OSHA proposes specific exemptions from its 1926 Subpart CC Standard to be applied to flash-butt welding trucks. These machines are designed exclusively for railroad work. They are equipped with an attachment designed to suspend and move a welding workhead low and close to the rail, for the purpose of welding two large sections of rail together. The process is repeated from one rail to the next over and over again leading to one continuously welded rail (CWR).

The Labor Organizations generally support the proposal to revise Sec. 1926.1400(c) to expressly exempt flash-butt welding trucks and "other railroad roadway work machines equipped only with hoisting devices used to suspend and move their workhead assemblies low and close to the rails". Because these machines are not capable of raising and suspending the workhead more than a few feet above the ground or roadbed, and the weight and structure of the workhead does not present any danger of equipment tipover at

any point during the workhead's full range of motion, it does not appear to compromise worker safety.

The Labor Organizations generally support OSHA's proposal to re-designate the severability provision as Sec. 1926.1443 to enable the addition of a new Sec. 1926.1442 dedicated to the railroad roadway maintenance machines ("RMM") addressed in this proposed rulemaking. The proposal to consolidate all RMM exemptions into a single section (Sec. 1926.1442) for the convenience of affected parties and to maintain the organizational integrity of Subpart CC. As proposed, aside from the Sec. 1926.1400(c)(18) exclusion for flash-butt welding trucks and similar equipment,

The proposed §1926.1442 would give seven (7) exemptions to the rail industry.

- (1) *Operator certification and training requirements.* OSHA proposes to exempt operators of certain RMMs from the OSHA operator qualification and certification requirements of 1926.1427, and Training under 1926.1430. FRA has already promulgated section 214.357, *Training and Qualification for Operators of Roadway Maintenance Machines equipped with a Crane*. The Labor Organizations recognize that the OSHA final rule drew from industry best practices and promulgated regulatory requirements to "prevent crane tipovers, electrocutions from crane contact with power lines, workers being struck by equipment or loads, crane collapse because of improper assembly, and other hazards associated with the operation of cranes in construction. We affirm that these hazards also exist in the railroad work environment and that the exemption from 1926.1427 and 1926.1430 does not relieve the railroad industry from addressing these hazards in the *Training and Qualification* provision, §214.357. Furthermore, this exemption does not relieve the FRA from its responsibility to assure that these hazards are addressed in each railroad's training and qualification program and to assure an equivalent level of safety is maintained under this proposed exemption from OSHA operator certification and training requirements.
- (2) *Rail clamps, rail stops, and work area controls.* The Labor Organizations affirm that the hazards of being struck by hoisted loads or RMMs equipped with a crane do exist in the railroad work environment, and FRA and each individual railroad must implement specific on-track safety provisions that address work area safety for the equipment and employees working around such equipment. In the absence of such on-track safety procedures, an equivalent level of safety cannot be established.
- (3) *Out of level work.* The Labor Organizations request the language be amended to provide that whenever a manufacturer approves or modifies the equipment for out-of-level operations, or whenever a registered professional engineer approves out-

of-level operations or approves modification of a load chart, such approvals must be in writing and be included in the "Instructions Document" required under 214.341(b) for the safe operation of each RMM. As a practical matter, the operator is required to access and refer to these "instructions", and the railroad is required to provide and maintain such instructions on each RMM large enough to carry the instruction document. Thus, any approved modification should be included in the written Instructions for operator reference. We are concerned with the lack of specificity of the proposed option of "allowing a qualified person to make additional adjustments." The language of "a qualified person" is ambiguous and offers no guidance as to what qualifies this person to make these adjustments. It is clear to us that the equipment manufacturer and an RPE are the only professionals qualified with the knowledge and expertise necessary to adjust load charts for railroad operations.

- (4) *Dragging a load sideways.* The Labor Organizations believe the long existing practice of dragging a load sideways in the rail industry is absolutely crucial for the rail industry to perform. Many construction activities, particularly the handling of rail, would be virtually impossible to perform. The load is never lifted more than a few feet off the ground and the movement is predictable as it is performed over and over with the same material. We support the proposed §1926.1442(b)(4) exemption.
- (5) *Boom hoist limiting device.* The Labor Organizations believe the Sec. 1926.1416(d)(1) requirement for a limiting device is redundant because the stroke or piston travel is an inherent limit in each cylinder/piston. OSHA proposes Sec. 1926.1442(b)(5) to clarify that roadway maintenance machines using a hydraulic piston for raising and lowering the boom do not need a separate boom-hoist limiting device. The addition of this provision does not adversely affect worker safety. We support this proposed section and the clarification it brings to §1926.1416(d)(1)
- (6) *Manufacturer guidance for modifications covered by 1926.1434.* Again, The Labor Organizations request that an amendment be made to provide that "approvals" of a procedure, modification, addition, repair, load chart, etc., such approvals must be in writing and be included in the "Instructions Document" required under 214.341(b) for the safe operation of each RMM.

We support OSHA's structure proposal of paragraph (b)(6)(i) by moving the last clause of subparagraph (A), "and specifying the equipment configurations to which that approval applies;" to a separate subparagraph (B) to make it clearer that this is a separate requirement. The structure of the regulation would be improved (proposed subparagraph (B) would be re-designated as subparagraph (C)).

(7) *Other manufacturer guidance.* Again, The Labor Organizations insist that any registered professional engineer's determination or approval should be in writing and be included in the "Instructions Document" required under 214.341(b) for the safe operation of each RMM.

In closing, the Labor Organizations reiterate their belief that all RPE and manufacturer determinations should be in writing and be included in the "Instructions Document" required under 214.341(b) for the safe operation of each RMM.

In the proposed rule, OSHA states it is unaware of any need for additional exemptions or any significant differences in the hazards of using railroad equipment for these purposes [traditional construction activities] than for similar projects in other industries. Additionally, the proposed rule text in 1926.1442, *Railroad Roadway Maintenance Machines*, states: "For construction work other than bridge construction, employers using equipment covered by Subpart CC of this part that meets the definition of "Roadway Maintenance Machines" must comply with the requirements in Subpart CC of this part, except as provided in paragraphs (b)(1) through (7) of this section (i.e., Section 1926.1442).

Thus, it appears OSHA is affirming that it retains jurisdiction for cranes, including the proposed exemptions. The Labor Organizations affirm their support for OSHA's position that the requirements of Subpart CC apply to railroad RMMs equipped with a crane, except for training and the exemptions provided under 1926.1442. The Labor Organizations fully support OSHA's continuing regulatory oversight of crane safety in the railroad industry because OSHA's expertise with cranes far exceeds FRA's limited expertise.

The Labor Organizations appreciate the opportunity to submit these comments in response to the AAR Petitions for Reconsideration of the final rule in Docket No. OSHA-2015-0012, *Cranes and Derricks in Construction Railroad Roadway Work*.

Respectfully submitted,


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