operator of an airport is reasonable under section 113 of the Federal Aviation Administration Authorization Act of 1994 (August 23, 1994; Pub. L. 103–305; 108 Stat. 1577–1579).

Issued at Washington, DC this 22nd day of February, 1995.

Federico Peña,

Secretary of Transportation. [FR Doc. 95–4984 Filed 2–28–95; 8:45 am] BILLING CODE 4910–62–P

Federal Railroad Administration

49 CFR Part 218

[FRA Docket Number RSOR-11, Notice No. 4]

RIN 2130-AA77

Protection of Utility Employees Response to Petitions to Reconsider

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

ACTION: Final rule amendments with request for comments.

SUMMARY: On August 16, 1993, FRA published safety standards for utility employees working as temporary members of train and yard crews. FRA now amends a definition, responds to the concerns raised in petitions to reconsider the final rule, issues an amendment on a subject addressed earlier in this rulemaking, and makes technical corrections. The amendment will permit single-person crews to work within the protections provided for train and yard crews.

DATES: These amendments will become effective May 15, 1995. Comments on the amendments must be received by May 1, 1995.

ADDRESSES: Comments on the amendments should be submitted to the Docket Clerk, Office of Chief Counsel, RCC–30, Federal Railroad Administration, 400 Seventh Street, SW., Room 8201, Washington, DC 20590.

James T. Schultz, Chief, Operating Practices Division, Office of Safety, FRA, RRS-11, Washington, DC 20590

FOR FURTHER INFORMATION CONTACT:

FRA, RRS-11, Washington, DC 20590 (telephone: 202-366-9252), or Kyle M. Mulhall, Trial Attorney, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202-366-0443).

SUPPLEMENTARY INFORMATION: On August 16, 1993 FRA published a regulation allowing utility crew members to be excluded from the blue signal protection requirements of part 218 while the employee works as a temporary member

of a train or yard crew. 58 FR 43287. FRA believed this rule, which provides new protections for utility employees, would allow more efficient use of railroad personnel without compromising the level of safety provided by the pre-amendment regulations.

In response to this regulatory revision, FRA received several petitions for reconsideration of the new rule, including its rationale and specific provisions of its preamble and text.

Basis for the Rule

The preamble to the Final Rule explained the agency's rationale for issuing this regulation. Several petitioners continue to object to the rule, arguing that expanding the original train and yard crew exclusion to cover utility employees will create safety risks because the new rule does not provide adequate protection for temporary crew members.

The petitions FRA received from rail labor question the safety data on which FRA partially relied in this rulemaking. One petitioner cites two specific occurrences in 1987 and anecdotal information regarding similar mishaps involving operating crews that the petitioner argues were preventable had there been no exclusion for train and yard crews. (That exclusion, of course, was in FRA's original rule and directly tracked the statutory provision that required the rule.) FRA does not agree that these limited incidents outweigh the remaining safety data. Our conclusion continues to be that utility employees can function safely without blue signal protection under properly structured Federal regulations and railroad operating rules requiring adequate communication and understanding of the work to be performed. FRA notes that the rule does not prevent railroads from enacting more stringent procedures to address isolated safety problems. The agency continues to believe that according a utility employee the same level of protection historically provided to train and yard crews would not risk the employee's safety. Accordingly, FRA will not withdraw the final rule.

FRA has no evidence on which to conclude that crews are currently experiencing a material risk ascribable to unexpected train movements. FRA believes, however, there may be reason to conduct a future rulemaking on protection for all train and yard crew members, given the issues raised in this rulemaking. Many of the issues raised by participants in this rulemaking were beyond the scope of this proceeding and

would be more appropriately addressed in separate agency actions.

Preamble and Text of Final Rule

FRA received petitions from rail labor and management questioning specific portions of the preamble and rule. FRA responds below to each primary objection.

1. One-Member Crews. FRA's notice of proposed rulemaking requested comment on the protection needed for a single locomotive engineer performing helper or hostler service. The notice stated:

FRA is also concerned that protection provided for one-person assignments (i.e., hostlers or other unaccompanied engineers) be consistent with safety and efficiency. FRA specifically invites comments on the circumstances under which these engineers acting alone might be permitted to perform functions outside of the area under control of the mechanical forces without complete blue signal protection as provided under §§ 218.25 (main track) or 218.27 (other than main track).

57 FR 41457.

Protecting one-member crews was therefore within the scope of the notice. FRA chose not to address the subject in rule text because no comments were received. In the preamble to the final rule, however, FRA expressed discomfort with one-member crews. It was stated that a lone engineer could not take advantage of the exclusion from blue signal protection unless joined by a utility employee to ensure that the locomotive cab was always occupied. 58 FR 43287.

The Association of American Railroads (AAR) objected to that preamble statement, arguing that the language of the rule did not seem to bar the use of one-person crews. FRA agrees that the rule does not impose such a prohibition on one-member crews. FRA therefore grants this portion of AAR's request.

Although AAR is correct that the utility employee rule did not, on its face, preclude its application to onemember crews, application of utility protection to such crews would not be logical. The utility employee rule presumes the presence of a permanent crew to which the utility crew member becomes temporarily attached for specific purposes. One-person crews either do not join larger crews or do so to perform duties distinct from those assigned a utility employee. FRA remains concerned with the unique risk faced by lone engineers despite the current lack of evidence of a substantial injury record for one-member crews. An