

2.17(b)(3) through various means, including webinars and the Web site distribution of Frequently Asked Questions as appropriate, rather than through the issuance of a **Federal Register** notice.

OFCCP invites any interested party to comment on the proposal to rescind the Standards and the Voluntary Guidelines.

**Patricia A. Shiu,**

*Director, Office of Federal Contract Compliance Programs.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 228

[Docket No. FRA-2009-0042]

RIN 2130-AC13

#### Safety and Health Requirements Related to Camp Cars

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** To carry out a 2008 Congressional rulemaking mandate, FRA is proposing to create regulations prescribing minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees and individuals employed to maintain its right of way. The proposed regulations would supplant existing guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, and sanitary, and afford those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the railroad. In further response to the rulemaking mandate, the proposed regulations would include the additional statutory requirements, enacted in 2008, that camp cars be provided with indoor toilets, potable water, and other features to protect the health of such workers.

Under separate but related statutory authority, FRA is proposing to amend regulations on construction of employee sleeping quarters. In particular, FRA proposes to implement a 2008 statutory amendment that, on and after December 31, 2009, camp cars provided by a

railroad as sleeping quarters exclusively for individuals employed to maintain the right of way of a railroad are within the scope of the prohibition against beginning construction or reconstruction of employee sleeping quarters near railroad switching or humping of hazardous material. FRA's existing guidelines with respect to the location, in relation to switching or humping of hazardous material, of a camp car that is occupied exclusively by individuals employed to maintain a railroad's right of way would be replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, FRA would make conforming changes, clarify a provision on applicability, remove an existing provision on preemptive effect as unnecessary, and move, without change, an existing provision on penalties for violation of FRA regulations.

**DATES:** (1) Written comments must be received by March 4, 2011. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA anticipates being able to resolve this rulemaking without a public hearing. However, if FRA receives a specific request for a public hearing prior to March 4, 2011, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** Comments, which should be identified by Docket No. FRA-2009-0042, may be submitted by any one of the following methods:

- *Fax:* 1-202-493-2251;
- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590;

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- Electronically through the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments

received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Alan Misiaszek, Certified Industrial Hygienist, Staff Director, Industrial Hygiene Division, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493-6002), [alan.misiaszek@dot.gov](mailto:alan.misiaszek@dot.gov) or Ann M. Landis, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493-6064), [ann.landis@dot.gov](mailto:ann.landis@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Statutory, Regulatory, and Factual Background**

This proposal is being issued primarily to help satisfy the requirements of section 420 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110-432, Div. A, 122 Stat. 4848, October 16, 2008 (amending a provision of the hours of service laws at 49 U.S.C. 21106). RSIA requires the Secretary of Transportation (Secretary) to adopt regulations no later than April 1, 2010 establishing minimum standards for "employee sleeping quarters" in the form of "camp cars" that are provided by railroads. 49 U.S.C. 21106(a)(1), (c). Specifically, RSIA instructs the Secretary to prescribe regulations "to implement [49 U.S.C. 21106(a)(1)] to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that use camp cars. \* \* \* 49 U.S.C. 21106(c). The statutory term "employee" is defined in 49 U.S.C. 21101(3) to include a train employee, a signal employee, and a dispatching service employee, who as a group are sometimes referred to as "covered service employees." As amended through 2008, 49 U.S.C. 21106(a)(1) provides that such camp cars must be—clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by

noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees.

49 U.S.C. 21106(a)(1). RSIA requires the Secretary to conduct this rulemaking “in coordination with the Secretary of Labor,” and to “assess the action taken by any railroad carrier to fully retrofit or replace its camp cars. \* \* \*” 49 U.S.C. 21106(c).

FRA has longstanding regulations implementing the statutory provision that prohibits railroads, effective July 8, 1976, from beginning the construction or reconstruction of railroad-provided sleeping quarters for train employees, signal employees, and dispatching service employees in an area or in the immediate vicinity of an area where railroad switching or humping of hazardous material occurs. Currently, these regulations affecting the location of sleeping quarters for covered service employees do not apply to sleeping quarters exclusively for individuals employed to maintain the right of way of a railroad.

RSIA directly requires that railroads using camp cars must “fully retrofit or replace such cars in compliance with [49 U.S.C. 20106(a)]” by December 31, 2009. 49 U.S.C. 21106(b). As will be further explained below, FRA interprets 49 U.S.C. 21106(b) as applying the prohibition in 49 U.S.C. 21106(a)(2) against beginning construction or reconstruction of employee sleeping quarters near switching or humping operations to camp cars provided by railroads as sleeping quarters for individuals employed to maintain the railroad right of way (MOW workers) and setting a compliance date of December 31, 2009, with respect to such camp cars exclusively for MOW workers.

The Secretary has delegated the responsibility to carry out his responsibilities under RSIA to the Administrator of FRA. 74 FR 26981, 26982, June 5, 2009, codified at 49 CFR 1.49(o). See also 49 CFR 1.49(d), delegating the Secretary’s authority to carry out the hours of service laws to the Administrator of FRA, and 49 U.S.C. 103.

Proposed subpart E is based extensively on FRA guidelines already in place, which, in turn, were based on the U.S. Department of Labor’s Occupational Safety and Health Administration (“OSHA”) standards for sanitation and temporary labor camps at 29 CFR 1910.141 and 1910.142, modified as appropriate for the railroad environment. See FRA’s Guidelines for Clean, Safe, and Sanitary Railroad

Provided Camp Cars (1990 Guidelines), 55 FR 30892, July 27, 1990, codified at 49 CFR part 228, app. C.

In addition, FRA has consulted with officials of the only railroad currently known to be utilizing camp cars as sleeping quarters, Norfolk Southern Railway Company (NS), to determine what actions it has taken to conform to the statutory requirements that the cars be not only clean, safe, and sanitary and provide an opportunity for rest uninterrupted by noise under the control of the railroad, but also have “indoor toilet facilities, potable water, and other features to protect the health” of employees and MOW workers and not be placed in the immediate vicinity of certain “switching or humping operations” as defined in FRA regulations at 49 CFR 228.101(c)(3). NS has assured FRA that all of its camp cars comply with statutory requirements, but its interpretation asserts that camp cars exclusively occupied by MOW workers are not subject to 49 U.S.C. 21106(a)(2).

MOW workers have been given protection by limits of how close their sleeping quarters are to switching and hump operations. That protection formerly only applied to train employees, signal employees, and dispatching employees. In 1976, Congress required that all sleeping quarters, “including crew quarters, camp or bunk cars, and trailers,” provided by a railroad to its “employees” be “clean, safe, and sanitary” and provide an opportunity for rest without interruptions caused by noise under the control of the railroad. Public Law 94–348, sec. 4, adding subsection (a)(3) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(3) (1976) and now codified as amended at 49 U.S.C. 21106(a)(1).<sup>1</sup> Again, the term “employees” included only those who, in the terminology of the present statute, are called “train employees,” “signal employees,” or “dispatching service employees,” and did not include MOW workers. In the same legislation, Congress prohibited railroads from beginning, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for “employees” “within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area where railroad switching or humping operations are performed.” Public Law 94–348, sec. 4, adding subsection (a)(4) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(4)

<sup>1</sup> In the 1994 recodification of Federal transportation laws, the Hours of Service Act was simultaneously repealed, reenacted as revised, and recodified as positive law primarily in 49 U.S.C. chapter 211. Public Law 103–272, July 5, 1994.

(1976) and now codified as amended at 49 U.S.C. 21106(a)(2).

To carry out the 1976 statutory amendment at section 2(a)(3) of the Hours of Service Act, on July 18, 1978, FRA published interpretative guidance and a statement of policy regarding the provision requiring “clean, safe, and sanitary” sleeping quarters for employees free from railroad-controlled noise that would interrupt rest. Amendment to appendix A to 49 CFR part 228, 43 FR 30803, July 18, 1978.

To carry out the 1976 amendment at section 2(a)(4) of the Hours of Service Act, on July 19, 1978, FRA published regulations codified at 49 CFR part 228, subpart C (subpart C). 43 FR 31012. As stated in the preamble to those regulations,

[t]he primary impetus of this amendment to the Hours of Service Act was the accident that occurred at Decatur, Illinois, on July 19, 1974. (H.R. Report No. 94–1166 (1976) at page 11.) Seven employees were killed and another 33 were injured when an explosion demolished crew quarters that were located between and adjacent to two classification yards and did other extensive damage in the middle of the Norfolk and Western yard. Three hundred sixteen persons who lived or worked in the surrounding area were also injured. The explosion resulted from accidental release of product which occurred during the switching of hazardous materials.

\* \* \*  
In enacting the 1976 amendment to the law, Congress determined that additional protection from accidents such as the one that occurred at Decatur, Illinois, is required for crew quarters.

43 FR 31009.

Subpart C defines key terms in section 2(a)(4) of the Hours of Service Act, permits railroads to request a determination by FRA that a particular proposed site is not within the “immediate vicinity,” and states the criteria by which FRA will make the determination. See 49 CFR 228.101(a). FRA approval is necessary before a railroad may begin the “construction or reconstruction” of sleeping quarters for employees within the distance of switching or humping operations specified in the regulations. 49 CFR 228.101. The distance triggering the need for approval is one-half mile “as measured from the nearest rail of the nearest trackage where switching or humping operations are performed to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.” 49 CFR 228.101(b). “Switching or humping operations” is defined to include “the classification of placarded railroad cars according to commodity or destination, assembling

of placarded cars for train movements, \* \* \*.” 49 CFR 228.101(c)(3). “Placarded car” is defined to mean “a railroad car required to be placarded by the Department of Transportation hazardous materials regulations (49 CFR 172.504).” 49 CFR 228.101(c)(4). “Construction” includes the “[p]lacement of a mobile or modular facility,” which includes placement of a camp car. 49 CFR 228.101(c)(1)(iii). On or after July 8, 1976, any railroad placing a camp car occupied by an employee near switching or humping operations must obtain FRA approval before doing so. 49 CFR 228.101(a).

In 1988, Congress redefined “employee” for purpose of section 2(a)(3) of the Hours of Service Act (now codified at 49 U.S.C. 21106(a)(1)) so as to include MOW workers, thereby making all sleeping quarters provided by a railroad to MOW workers subject to the same statutory standard. Public Law 100-342, sec. 19(b). It should be noted, however, that the 1988 amendment did not make MOW workers “employees” for purposes of the “location” requirement at section 2(a)(4) of the Hours of Service Act. Consequently, a camp car occupied only by employees or by both employees and MOW workers is subject to subpart C, but a camp car occupied only by MOW workers is not subject to subpart C.

To carry out the 1988 statutory amendment, FRA issued an interpretation in 1990 of the terms “clean,” “safe,” and “sanitary” as applied to railroad-provided camp cars occupied by employees, MOW workers, or both based on standards established by OSHA. 49 CFR part 228, app. C. In FRA’s 1990 Guidelines, the agency noted that—

FRA believes that camp cars, either because of express limitations of local codes, or by virtue of their physical mobility, are generally not subject to state or local housing, sanitation, health, electrical or fire codes. Therefore, FRA is unable to rely upon state or local authorities to ensure that persons covered by the [Hours of Service] Act who reside in camp cars are afforded an opportunity for rest in ‘clean,’ ‘safe,’ and ‘sanitary’ conditions. Accordingly, FRA must determine what adverse conditions might reasonably be expected to interfere with the ordinary person’s ability to rest, so as to enunciate policy guidelines to be applied by FRA in enforcing the words ‘clean,’ ‘safe,’ and ‘sanitary’ for purposes of the Act.

55 FR 30892, 30893, July 27, 1990.

Twenty years after the 1988 statutory amendment, Congress enacted section 420 of RSIA. Congress added requirements that all sleeping quarters provided by railroads to employees or MOW workers have “indoor toilets,

potable water, and other features to protect the health of [employees and MOW workers] (amending 49 U.S.C. 21106(a)(1));” that any railroad that uses camp cars must “fully retrofit or replace” such cars to be in compliance with 49 U.S.C. 21106(a) by December 31, 2009 (*see* new 49 U.S.C. 21106(b)); and that the Secretary prescribe regulations to implement 49 U.S.C. 21106(a)(1), requiring compliance by December 31, 2010 (*see* new 49 U.S.C. 21106(c)).

FRA has considered whether Congress intended for railroad-provided camp cars occupied by MOW workers to be subject to the restrictions of 49 U.S.C. 21106(a)(2) on their location. Clearly, by the express text of 49 U.S.C. 21106(c), the regulations mandated by that subsection are intended “to implement subsection (a)(1)” (*i.e.*, 49 U.S.C. 21106(a)(1)), and not to implement both 49 U.S.C. 21106(a)(1) and 49 U.S.C. 21106(a)(2). Just as clearly, Congress did not amend 49 U.S.C. 21106(a)(2) itself, which bars beginning such construction or reconstruction of sleeping quarters for covered service employees on or after July 8, 1976; Congress did not, for example, add language to subsection (a)(2) to prohibit beginning construction or reconstruction of railroad-provided camp cars used as sleeping quarters for MOW workers, with a new effective date in subsection (a)(2) itself.

In the end, however, FRA concludes that Congress did intend such location restrictions in subsection (a)(2) to apply to camp cars exclusively occupied by MOW workers, based primarily on the language of subsection (b), which reads as follows:

(b) Camp cars.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with *subsection (a)*.

(Emphasis added). 49 U.S.C. 21106(b). Congress could have written that the camp cars must be in compliance with “subsection (a)(1),” but it did not; instead Congress required compliance with subsection (a) as a whole, a two-paragraph provision that includes the prohibition on placing camp cars (and other forms of sleeping quarters) near certain switching or humping operations. It is a basic canon of statutory construction that all words of a statute should be given effect.

To give subsection (b) meaning, with respect to requiring camp cars to be in compliance with the old mandate of subsection (a)(2), some act must be required that is possible to perform in the future, specifically not later than the December 31, 2009, date stated in subsection (b). FRA reads that extra

requirement imposed by subsection (b) to be that camp cars exclusively occupied by MOW workers be subject to subsection (a)(2). With respect to subsection (a)(2), which contains a compliance date about 32 years before the enactment of subsection (a)(2), a new compliance date would be necessary in order to avoid creating an unconstitutional, *ex post facto* law, and that is what Congress provided with the new statutory deadline for compliance of December 31, 2009. FRA does not read subsection (b) as supplanting the July 8, 1976, effective date of the prohibition in subsection (a)(2) with respect to construction or reconstruction of sleeping quarters occupied by train employees, signal employees, or dispatching service employees. Rather, FRA reads the text of section 21106(b) as a direct, statutory requirement that railroads using camp cars as sleeping quarters see to it that the cars exclusively occupied by MOW workers comply with the statutory requirements of not only subsection (a)(1), but also subsection (a)(2), and to do so by December 31, 2009.

Of course, it could be argued that Congress simply made a technical error in requiring that camp cars comply with all of subsection (a) and that it meant to say “subsection (a)(1),” particularly given that the requirement is to “retrofit or replace” the cars, not to “retrofit or replace and position” the cars. FRA thinks that the legislative history of section 420 of RSIA argues against such a strict interpretation. That legislative history indicates that that Congress invited FRA to take a new, more protective look at camp cars. The House precursor to section 420 of RSIA would have directly prohibited the use of camp cars entirely by statute, effective one year after the date of enactment. *See* section 202 of H.R. 2095 as reported by the House Committee on Transportation and Infrastructure in H.R. Rep. No. 110-336 and analysis at p. 39. The Senate precursor to section 420 of RSIA would have authorized FRA to prohibit railroads’ use of camp cars as sleeping quarters (*i.e.*, by regulation or order) “if necessary to protect the health and safety of the employees.” *See* section 410 of S. 1889 as reported by the Senate Committee on Commerce, Science, and Transportation in S. Rep. No. 110-270. Based on the plain meaning of 49 U.S.C. 21106 and the legislative history of section 420 of RSIA, FRA believes its interpretation applying the location requirement of subsection (a)(2) to camp cars occupied exclusively by MOW workers is both correct and appropriate.

To carry out this statutory interpretation, FRA is proposing an

amendment to subpart C. The statutory authority to conduct this aspect of the rulemaking is FRA's authority under 49 U.S.C. 21106(a)(2) to prescribe regulations to implement that statutory provision, which reads (as revised during the 1994 recodification of the rail safety laws effected by Pub. L. 103-272) as follows:

A railroad carrier \* \* \* (2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters \* \* \* in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

[Emphasis added.] This is the authority under which FRA originally prescribed subpart C. 41 FR 53070, Dec. 3, 1976.

## II. Section-by-Section Analysis

### Part 228

FRA proposes to revise the name of 49 CFR part 228 to reflect all of its contents more explicitly. The current name of the part is "HOURS OF SERVICE OF RAILROAD EMPLOYEES". FRA proposes to rename the part "HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS".

#### Subpart A of Part 228

FRA proposes to tailor § 228.1, Scope, to reflect the addition of new subpart E, Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters such as by adding new paragraph (c).

FRA also proposes to amend § 228.3, Application. Currently, that section, says that, in general, part 228 applies to railroads and contractors and subcontractors of railroads. FRA proposes to revise the section to indicate that although subparts B and D apply to railroads and contractors and subcontractors of railroads, subparts C and E apply only to railroads. Subpart A contains no duties that apply to any entity; its definitions apply to terms in the part as a whole or individual subparts. This section is being amended to clarify that both plant railroads and tourist railroads that are not part of the general railroad system of transportation are exempt from the requirements of part 228.

Finally, FRA proposes to amend § 228.5, Definitions, by adding definitions of four terms. The terms "plant railroad" and "tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation" are used in the proposed "application" provisions of subpart A and proposed subpart E, and

both terms refer to types of operations that have been traditionally been excluded from FRA regulations because they are not part of the general railroad system of transportation. There is a more extensive explanation of this system in appendix A to 49 CFR part 209, and it is explicitly defined there as "the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas." The terms "camp car" and "MOW worker" are used in proposed subparts C and E. "Camp car" would be defined as "a trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee or MOW worker. A wreck train is not included."

The longstanding definition of "camp car" in the guidelines of 49 CFR part 228, app. C is clarified by adding "or any other mobile vehicle or mobile structure" as catch-all language. For example, a recreational vehicle would be a camp car. In addition, the phrase "railroad employees" is replaced with "an employee or MOW worker." The term "employee" is defined in existing § 228.5 and means a train employee, signal employee, or dispatching service employee. The term "MOW worker" would be defined as "an individual employed to maintain the right of way of a railroad"; the language of the definition is based on the statutory provision at 49 U.S.C. 21106(a)(1).

#### Subpart B of Part 228

FRA proposes to remove § 228.13, Preemptive effect, for two reasons. First, the section is unnecessary because it is duplicative of statutory law at 49 U.S.C. 20106 and case law. Second, the section is incomplete because it omits reference to the preemptive effect of the hours of service laws (49 U.S.C. chapter 211), the authority for 49 CFR part 228, subparts C and E, as provided under case law. The hours of service laws have been interpreted by the Supreme Court as preempting State regulation of the hours of railroad employees. *See Hill v. State of Florida ex rel. Watson*, 325 U.S. 538, 553 (1945).

In addition, FRA proposes to redesignate two provisions in subpart B that are intended to apply to the entire part in order to move them to subpart A, General. In particular, FRA proposes to redesignate § 228.21, Civil penalty, and § 228.23, Criminal penalty, as § 228.6, Penalty.

#### Subpart C of Part 228

FRA proposes to change the heading of subpart C from "Construction of Employee Sleeping Quarters" to "Construction of Railroad-Provided Sleeping Quarters." "Railroad-Provided" is added to emphasize that the regulations apply only to sleeping quarters that are provided by a railroad, and the word "Employee" is deleted since the proposed subpart would apply not only to sleeping quarters occupied by an employee but also to sleeping quarters in the form of a camp car that are provided by a railroad to an MOW worker.

In § 228.101, the heading would be changed from "Distance requirement; definitions" to "Distance requirement for railroad-provided employee sleeping quarters; definitions used in this subpart." This revision is intended to reflect that the section applies only to sleeping quarters for employees (not for MOW workers). That section reflects the 1976 statutory amendment discussed earlier in the preamble that carries a July 8, 1976, compliance date.

Section 228.102 Distance Requirement for Camp Cars Provided by Railroads as Sleeping Quarters Exclusively for MOW Workers

In new § 228.102, FRA proposes to restate the statutory language at 49 U.S.C. 21106(b) and 21106(a)(2) by saying that a railroad that uses camp cars must comply by December 31, 2009, with the prohibition in 49 U.S.C. 21106(a)(2) with respect to those camp cars that are provided as sleeping quarters exclusively to MOW workers. (Camp cars for train employees, signal employees, or dispatching service employees or those occupied by both covered service employees and MOW workers are already subject to the July 8, 1976, compliance date in 49 U.S.C. 21106(a)(2) and 49 CFR 228.101.) In other words, under the statute, starting December 31, 2009, a railroad must not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping is performed. (Of course, compliance with the regulation itself would not be due until the date established in the final rule.) The key terms in the new proposed section are already defined in the subpart or at § 228.5. In effect, absent FRA's special approval in accordance with subpart C, a railroad may not begin construction or reconstruction of a camp car (including the placement of a camp car) for MOW workers in or within the distance

specified in the regulations at 228.101(b) (one-half mile from the location where such switching or humping of placarded cars takes place). Procedures on requesting FRA's special approval are found within that subpart and at 49 CFR part 211. The proposed section notes that references to "employees" in the sections on procedures on §§ 228.103–228.107 must be read to include MOW workers if read in conjunction with the proposed section.

#### *Subpart E of Part 228*

FRA proposes to add new subpart E entitled, "Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters."

#### Section 228.301 Purpose and scope

This proposed section is a basic restatement of the legal mandate in section 420 of RSIA that is codified at 49 U.S.C. 21106(c), which requires the issuance of regulations to implement 49 U.S.C. 21106(a)(1) with respect to certain camp cars. Section 21106(a)(1) of title 49 of the U.S. Code provides that sleeping quarters provided by a railroad to its covered service employees and MOW workers must be—

clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees \* \* \*.

As previously discussed, FRA does not currently have regulations addressing safety and health requirements for camp cars, but instead has published guidelines that interpret pre-RSIA statutory requirements. 49 CFR part 228, appendix C. The regulations proposed in this NPRM would update and supplant the outdated guidelines consistent with RSIA's requirements.

#### Section 228.303 Application and Responsibility for Compliance

This proposed section defines the railroads that would be covered by the proposed new subpart. All railroads would be covered, with the exception of three types of railroad operations. The three listed exceptions are for operations that are not part of the general railroad system of transportation: (1) Railroads that operate exclusively on track that is not part of that system (plant railroads, as that term is defined in § 228.5); (2) tourist, scenic, historic, or excursion railroads that are not part of the general railroad system of transportation, a term also defined in § 228.5 (tourist railroads); and (3) rapid transit operations in an urban area that

are not connected to the general railroad system of transportation. *See* 49 CFR part 209, app. A for a discussion of "general railroad system of transportation." As a matter of policy, FRA almost never exercises its statutory jurisdiction over plant railroads and generally does not exercise its statutory jurisdiction over tourist railroads that operate only off the general system. FRA lacks statutory jurisdiction over urban rapid transit operations not connected to the general system. *See* 49 U.S.C. 20102, 20103.

In addition, proposed paragraph (b) explains that even though the subpart applies only to railroads, a railroad may not avoid fulfilling the requirements of this subpart by using contractors or subcontractors. If, for example, a railroad uses a contractor to provide dining services for the occupants of a camp car, FRA will still enforce the provisions of § 228.325 to ensure that the food service is safe and sanitary. FRA will hold the railroad liable for its contractor's or subcontractor's failing to fulfill the requirements of this proposed subpart.

#### Section 228.305 Compliance Date

This proposed section establishes the deadline for compliance. A December 31, 2010 deadline for compliance with the regulations was set by Congress in section 420 of RSIA, but the final rule may not become effective until 60 days after it is published.

#### Section 228.307 Definitions

This proposed section defines key terms used in proposed subpart E. The definitions are set forth alphabetically. FRA intends these definitions to clarify the meaning of terms as they are used in the text of the proposed subpart. Many of these definitions were originally set forth in FRA's 1990 Guidelines. In addition, many of these definitions have been taken from standards issued by OSHA.

#### Section 228.309 Structure, Emergency Egress, Lighting, Temperature, and Noise-Level Standards

This proposed section sets forth a series of requirements for camp cars provided by a railroad as sleeping quarters to employees and MOW workers. First, the section requires that the camp cars are constructed so as to provide protection from the elements. Second, the section requires that the camp cars provide an opportunity for rest free from interruptions caused by noise under the control of the railroad that provides the camp cars. The limit of 55 dB(A) that FRA intends to establish is based on the longstanding

interpretation of the hours of service statutory provision related to sleeping quarters. 49 U.S.C. 21106(a)(1); 49 CFR part 228, app. A and C. It is notable that the 55 dB(A) level is typical of semi-urban and suburban neighborhood outside ambient noise during the evening hours with minimal street traffic. Levels such as these have also been measured in the same neighborhoods on side streets during daylight hours; thus, the 55 dB(A) limit should not be difficult to achieve. Third, this section requires that the camp cars be able to maintain a minimum temperature during cold weather and a maximum temperature during hot weather. FRA invites comment on whether the temperatures currently specified should be changed. Fourth, the section requires that camp cars provide an adequate means of egress in the event of an emergency situation. There must be an exit at both ends of the camp car so that occupants may pass through each end frame. Finally, FRA is also establishing minimum lighting standards, including provisions requiring the interior pathway to an emergency exit not immediately accessible to the occupants to be illuminated at all times for emergency egress purposes.

#### Section 228.311 Minimum Space Requirements

This proposed section requires that, to prevent overcrowding, the camp car's occupants have at least 50 square feet each; in a facility where occupants cook, live, and sleep, a minimum of 90 square feet per occupant must be provided. The proposed section also requires certain types of furniture.

#### Section 228.313 Electrical System Requirements

This proposed section sets forth requirements regarding the safety of heating, cooking, ventilation, air conditioning, and water heating equipment. These systems must be installed in accordance with all applicable provisions of the 2008 version of the National Electrical Code. In addition, all electrical systems installed must be compliant with that code.

This section of the proposed rule does not specify any certain code that must be used for heating, ventilation, and air conditioning (HVAC) systems, but does require that all such systems be safe and working. FRA anticipates that, to ensure that these systems are safe and operable, railroads will require HVAC systems in their camp cars to meet widely-adopted standards, such as those of the standards of the Sheet Metal and Air

Conditioning Contractors National Association, American Society of Heating, Refrigerating, and Air-Conditioning Engineers, and the American National Standards Institute. FRA is requesting comments on an appropriate standard to use for this provision as well as the practicability of FRA's attempting to enforce such standards. Please note that under 49 U.S.C. 20116, the date of adoption of a non-Federal standard incorporated by reference in a rail safety rule must be stated in the rule in order for the standard to become effective.

#### Section 228.315 Vermin Control

This proposed section sets forth requirements related to the prevention and resolution of vermin infestations.

#### Section 228.317 Toilets

This proposed section represents a substantial revision of the parallel provision in FRA's 1990 Guidelines to reflect a more appropriate number of toilets required. Further, the proposed section requires that there be at least two toilet rooms located within a camp car that has sleeping facilities. Additionally, if a camp car is lodging more than 10 occupants, then an additional toilet room must be provided within the camp car for each group of one to five occupants in excess of the 10. For example, if there are 12 occupants lodged in a camp car, there must be a total of three toilet rooms in the camp car (two for the first ten occupants and one for the additional two occupants). FRA believes that this requirement provides an adequate standard for the minimum number of toilets. A toilet room must have a door that latches, one that is capable of being and staying securely closed and be sufficient to assure privacy. Certain construction and cleanliness standards are also included in this section.

#### Section 228.319 Lavatories

This proposed section requires every camp car that provides a sleeping facility to have a basin with running water, soap, and hand-drying equipment or towels. It also requires at least two basins per car with sleeping facilities. If the running water available through a basin is not potable, a sign to that effect must be posted nearby.

#### Section 228.321 Showering Facilities

The proposed section mandates a minimum number of showers, construction requirements for the showers, and the provision of showering supplies. If the running water available through a shower is not potable, a sign to that effect must be posted nearby.

#### Section 228.323 Potable Water

This proposed section sets forth requirements to ensure that the water provided to the occupants of camp cars is safe. Potable water may be provided either as bottled water or as supplied through a plumbing system. Water uses such as personal oral hygiene, drinking, food washing, preparation, cooking, cleaning of the cooking utensils, cooking surfaces, and eating surfaces, *etc.* all require the use of potable water. If the water supplied for these uses is provided by means of a system of tanks, lines and other plumbing, the integrity and cleanliness of such systems needs to be maintained. To ensure that this is done, FRA intends to establish requirements to facilitate this objective.

Individuals who fill potable water systems servicing a camp car must be trained. The source for water provided to the occupants of a camp car must meet minimum standards put forth by the Environmental Protection Agency under 49 CFR part 141, National Primary Drinking Water Regulations. The railroad must obtain a certificate indicating this fact, which must be kept with the camp car for the duration of the connection, after which it must be sent to a centralized location, such as the railroad's system headquarters. This location should be the depository for all water certification records for the railroad. Equipment and construction employed to provide potable water to a camp car must be approved by the Food and Drug Administration. The water itself must be stored in sanitary containers and be dispensed so that sanitary conditions are maintained. Distribution lines must have adequate pressure for simultaneous use. Potable water systems must be flushed and disinfected regularly, and the steps that are taken must be recorded. Those records must be kept within the camp car for the duration of the connection and then sent to a centralized location. The section sets forth procedures to follow in the instance of a report of a problem with the taste of the water or a report of a health problem because of the water.

#### Section 228.325 Food Service in a Camp Car or Separate Kitchen or Dining Car

The proposed section prohibits the presence of food and beverages in toilet rooms and toxic materials areas, imposes requirements applicable when a central dining operation is provided, and ensures that food service facilities and operations will operate hygienically. The limitations of paragraphs (c) and (d) do not apply to

food service from nearby restaurants that are subject to State law.

#### Section 228.327 Sewage and Waste Collection and Disposal

This proposed section addresses the necessity of wastes being disposed to ensure a sanitary environment. Timely removal of all kinds of waste is mandated by proposed § 228.329(a). Camp cars must be equipped with a method to dispose of sewage according to proposed § 228.329(b). Appropriate waste containers for both general waste and food waste are required by proposed § 228.329(c) and (d), respectively.

#### Section 228.329 Housekeeping

This proposed section requires that each camp car be kept as clean as is practicable given the type of work performed by the occupants of the car. The section also requires elimination of splinters, unnecessary holes, and other conditions or features that impede cleaning.

#### Section 228.331 First Aid

This proposed section requires a first-aid kit in each camp car with specified contents. This list is based on the requirements for first-aid kits in passenger trains set forth in FRA's regulations on passenger train emergency preparedness at 49 CFR 239.101(a)(6), but adds a requirement of two elastic wraps. Railroads should add items to the first-aid kit as conditions warrant, for example, increasing the minimum number of bandages for a larger crew than normal or providing additional items if the occupants of the camp car regularly deal with hazardous material. Additional items railroads may consider providing include ammonia inhalants and a splint.

#### Section 228.333 Repairs

The proposed section gives a limited amount of time for a railroad, after receiving notice from FRA to repair a camp car that does not comply with these regulations. The section also requires that a railroad provide alternate accommodations when a camp car does not provide the essential services such as proper cooling or heating. In addition, if a camp car is noncompliant with the requirements of this subpart, and the railroad otherwise would have provided meals for occupants, it must provide for alternate arrangement for meals. 49 CFR part 228, app. A and C. FRA is considering specifying exactly how quickly a railroad must provide alternative accommodations for occupants when a camp car lacks

essential services and invites comment on this issue.

#### Section 228.335 Electronic Recordkeeping

This section provides for electronic recordkeeping of records required by this subpart.

#### Appendix A and Appendix C of Part 228

Finally, the proposal would make conforming changes to appendix A to part 228 and remove appendix C to part 228. The proposal would revise appendix A (FRA's statement of agency policy and interpretation of the hours of service laws) by removing the paragraph discussing the 1990 Guidelines, codified in appendix C to part 228, and the rationale for establishing those guidelines because appendix C would be eliminated and superseded by new 49 CFR part 228, subpart E. The proposal would also remove appendix C to reflect that the guidelines with respect to camp cars would be revised and converted into regulations at 49 CFR part 228, subpart E, which would become effective upon the date that compliance with the regulations is first required.

### III. Regulatory Impact and Notices

#### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. 44 FR 11034, February 26, 1979. FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this proposed rulemaking. Document inspection and copying facilities are available at U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at <http://www.regulations.gov>. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC-10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA-2009-0042.

To carry out a 2008 Congressional rulemaking mandate, FRA is proposing to create a new subpart of part 228, subpart E, which would prescribe minimum safety and health requirements for camp cars that a

railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees and individuals employed to maintain its right of way. The proposed regulations would supplant existing FRA guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, and sanitary, and afford those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the railroad. In further response to the rulemaking mandate, the proposed regulations would include the additional statutory requirements, enacted in 2008, that camp cars be provided with indoor toilets, potable water, and other features to protect the health of such workers.

Under separate but related statutory authority, FRA is proposing to amend subpart C of 49 CFR part 228, "Construction of Employee Sleeping Quarters." In accordance with the RSIA, FRA applies the location restrictions applicable to employee occupied camp cars to railroad camp cars occupied solely by MOW workers.

Finally, the proposal would make conforming changes to appendix A to part 228 and remove part appendix C to part 228. The proposal would also clarify its provision on applicability, remove an existing provision on the preemptive effect of part 228 as unnecessary, and move, without change, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

FRA estimates costs and benefits for the proposed rule. In this case, only one railroad would be affected, NS. NS has asserted and FRA assumes that they are in compliance due to statutory mandate or voluntary compliance with the 1990 guidelines. FRA expects NS's costs of complying with this proposed rule to be nominal and limited to such requirements as the installation of non-potable water signage and first-aid kit items. Consequently, NS is already experiencing the benefits that would flow from this NPRM. Any increase in realized benefits would be small. The main benefit of this proposed rule is the assurance it will provide that the health and safety benefits reaped by NS's upgrades will remain in place. FRA is confident that the benefits will more than justify incurring the nominal costs associated with implementation of the proposed rule. FRA is requesting comments on all aspects of this economic analysis, including its underlying assumptions.

#### B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No small railroads will be affected by the rule. FRA has prepared and placed in the docket this certification. FRA requests comments on this certification as well as all other aspects of this NPRM.

"Small entity" is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line-haul railroad" that has fewer than 1,500 employees, a "short line railroad" with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars. See "Size Eligibility Provisions and Standards," 13 CFR part 121, subpart A. Additionally, 5 U.S.C 601(5) defines as "small entities" governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies use a different standard for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board's



revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. FRA is using this definition for this rulemaking.

The *factual basis* for the certification that this final rule will not have a significant economic impact on a substantial number of small entities is that no small entities are affected. This proposed rule would affect only one railroad, the Norfolk Southern Railway, which is a Class I railroad with revenues far exceeding inflation-adjusted \$20 million. Accordingly, FRA does not consider this impact to be significant. Nor does FRA anticipate that this regulation would result in long-term or short-term insolvency for any small railroad.

**C. 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, the agency 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, the agency consults with State and local governments, or the agency consults with State and local

government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any direct compliance costs on State and local governments; 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. FRA has also determined that this proposed rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970, 49 U.S.C. 20106 (Section 20106), and case law interpreting the statutory predecessor of the hours of service laws at 49 U.S.C. chapter 211 (the Hours of Service Act). See Public Law 103-272. Section 20106 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. The Hours of Service Act has been interpreted by the Supreme Court as preempting State regulation of the hours of railroad employees. See *Hill v. State of Florida ex rel. Watson*, 325 U.S. 538, 553 (1945).

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

**D. International Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

**E. Paperwork Reduction Act**

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

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.319—Lavatories—Signs—Non-use for Consumption of Non-potable water.	1 Railroad .....	600 signs .....	2.5 minutes .....	25 hours.
228.321—Showering Facilities—Signs—Non-use for Consumption of Non-potable water.	1 Railroad .....	300 signs .....	2.5 minutes .....	13 hours.
228.323—Potable Water:				
—Water Hydrants—Inspections/Records for Water Hydrants, Hoses, Nozzles Used for Supplying Potable Water.	1 Railroad .....	370 inspections/ records.	5 minutes .....	31 hours.
—Inspection Records—Copy to Centralized Location When Connection Terminated.	1 Railroad .....	370 copies .....	10 seconds .....	1 hour.
Training—For Individuals Permitted to Fill Potable Water Systems.	1 Railroad .....	37 trained employees	15 minutes .....	9 hours.
—Certification by Laboratory for Potable Water Drawn from a Different Source.	1 Railroad .....	370 certificates .....	16 hours .....	5,920 hours.
—Copy of Certificate to Centralized Location When Connection Terminated.	1 Railroad .....	370 copies .....	10 seconds .....	1 hour.



CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Flushing—Record for Each Potable Water System Drained and Flushed with Disinfectant Every 120 days.	1 Railroad .....	584 records .....	2 hours .....	1,168 hours.
—Occupant Reports of Taste Problem ..	1 Railroad .....	10 oral reports .....	10 seconds .....	.028 hour.
—Draining/Flushing and Required Record Resulting from Occupant Taste Reports Plus Necessary Lab Tests/Certificates.	1 Railroad .....	10 records + 10 tests/certif.	2 hours + 16 hours ....	180 hours.
—Lab Report Copies .....	1 Railroad .....	10 copies .....	2 minutes .....	.3333 hour.

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 Mr. Robert Brogan, Information Clearance Officer, Office of Railroad Safety, at 202-493-6292, or Ms. Kimberly Toone, Office of Information Technology, at 202-493-6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: [Robert.Brogan@dot.gov](mailto:Robert.Brogan@dot.gov); or [Kimberly.Toone@dot.gov](mailto:Kimberly.Toone@dot.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements

which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

#### *F. Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 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 the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) [\$140.8 million in 2010] 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. This final rule would not result in the expenditure, in the aggregate, of \$140.8 million or more in any one year, and thus preparation of such a statement is not required.

#### *G. Environmental Assessment*

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related

regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. See 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.

\* \* \*

The following classes of FRA actions are categorically excluded:

\* \* \*

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

#### *H. Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22, 2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket 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 (65 FR 19477-78).

List of Subjects in 49 CFR Part 228

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 228 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

1. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101-21109; Sec. 108, Div. A, Public Law 110-432, 122 Stat. 4860-4866, 4893-4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49; and 49 U.S.C. 103.

2. The heading of part 228 is revised to read as set forth above.

- 3. Section 228.1 is amended by—
a. Removing the semicolon and the word "and" at the end of paragraph (a), and adding a period in their place;
b. Removing the word "employee" from paragraph (b); and
c. Adding a new paragraph (c) to read as follows:

§ 228.1 Scope.

\* \* \* \* \*

(c) Establishes minimum safety and health standards for camp cars provided by a railroad as sleeping quarters for its

employees and individuals employed to maintain its rights of way.

4. Section 228.3 is revised to read as follows:

§ 228.3 Application and responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, subparts A, B, and D of this part apply to all railroads, all contractors for railroads, and all subcontractors for railroads. Except as provided in paragraph (b) of this section, subparts C and E of this part apply only to all railroads.

(b) This part does not apply to—
(1) A railroad, a contractor for a railroad, or a subcontractor for a railroad that operates only on track inside an installation that is not part of the general railroad system of transportation (i.e., a plant railroad as defined in § 228.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 228.5; or
(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

5. Section 228.5 is amended by adding definitions for "Camp car," "MOW worker," "Plant railroad," and "Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation" in alphabetical order to read as follows:

§ 228.5 Definitions.

\* \* \* \* \*

Camp car means a trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee or MOW worker. A wreck train is not included.

\* \* \* \* \*

MOW worker means an individual employed to maintain the right of way of a railroad.

\* \* \* \* \*

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only

cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

\* \* \* \* \*

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (i.e., there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

\* \* \* \* \*

6. Section 228.6 is added to subpart A to read as follows:

§ 228.6 Penalties.

(a) Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$650 and not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy. Violations of the Hours of Service Act itself (e.g., requiring an employee to work excessive hours or beginning construction of a sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under that Act's penalty provision, 45 U.S.C. 64a.

(b) Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully

violates any requirement of this part may be liable for criminal penalties of a fine up to \$5,000, imprisonment for up to two years, or both, in accordance with 49 U.S.C. 21311(a).

**§ 228.13 [Removed and Reserved]**

7. Section 228.13 is removed and reserved.

**§ 228.21 [Removed and Reserved]**

8. Section 228.21 is removed and reserved.

**§ 228.23 [Removed and Reserved]**

9. Section 228.23 is removed and reserved.

10. The heading of subpart C of part 228 is revised to read as follows:

**Subpart C—Construction of Railroad-Provided Sleeping Quarters**

11. The heading of § 228.101 is revised to read as follows:

**§ 228.101 Distance requirement for railroad-provided employee sleeping quarters; definitions used in this subpart.**

\* \* \* \* \*

12. Section 228.102 is added to subpart C to read as follows:

**§ 228.102 Distance requirement for camp cars provided as sleeping quarters exclusively to MOW workers.**

(a) The hours of service laws at 49 U.S.C. 21106(b) provide that a railroad that uses camp cars must comply with 49 U.S.C. 21106(a) no later than December 31, 2009. Accordingly, on or after December 31, 2009, a railroad shall not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping of placarded cars is performed.

(b) This subpart includes definitions of most of the relevant terms (§ 228.101(b)–(c)), procedures under which a railroad may request a determination by the Federal Railroad Administration that a particular proposed site for the camp car is not within the “immediate vicinity” of railroad switching or humping operations (§§ 228.103 and 228.105), and the basic criteria utilized in evaluating proposed sites. See § 228.5 for definitions of other terms. For purposes of this § 228.102, references to “employees” in §§ 228.103–228.107 shall be read to include MOW workers.

13. Subpart E is added to read as follows:

**Subpart E—Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters**

Sec.

- 228.301 Purpose and scope.
- 228.303 Application and responsibility for compliance.
- 228.305 Compliance date.
- 228.307 Definitions.
- 228.309 Structure, emergency egress, lighting, temperature, and noise-level standards.
- 228.311 Minimum space requirements.
- 228.313 Electrical system requirements.
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- 228.321 Showering facilities.
- 228.323 Potable water.
- 228.325 Food service in a camp car or separate kitchen or dining facility in a camp.
- 228.327 Sewage and waste collection and disposal.
- 228.329 Housekeeping.
- 228.331 First aid.
- 228.333 Repairs.
- 228.335 Electronic recordkeeping.

**Subpart E—Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters**

**§ 228.301 Purpose and scope.**

The purpose of this subpart is to prescribe standards for the design, operation, and maintenance of camp cars that a railroad uses as sleeping quarters for its employees and MOW workers so as to protect the safety and health of those employees and MOW workers and give them an opportunity for rest free from the interruptions caused by noise under the control of the railroad, and provide indoor toilet facilities, potable water, and other features to protect the health and safety of the employees and MOW workers.

**§ 228.303 Application and responsibility for compliance.**

(a) This subpart applies to all railroads except the following:

- (1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.*, plant railroads, as defined in § 228.5);
- (2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 228.5; or
- (3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this subpart are generally stated in terms of the duty of a railroad, each person, including a contractor or subcontractor for a railroad, who performs any task covered by this subpart, shall perform that task in accordance with this subpart.

**§ 228.305 Compliance date.**

On and after [INSERT DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE], a railroad shall not provide a camp car for use as sleeping quarters by an employee or MOW worker unless the camp car complies with all requirements of this subpart.

**§ 228.307 Definitions.**

As used in this subpart—

*dB(A)* means the sound pressure level in decibels measured on the A-weighted scale.

*Decibel (dB)* means a logarithmic unit of measurement that expresses the magnitude of a physical quantity (usually power or intensity) relative to a specified reference level. For the measurement of noise in this subpart, the reference level for the intensity of sound pressure in air is 20 micropascals.

*Foot-candle* means a one lumen of light density per square foot.

*HVAC* means heating, ventilation, and air conditioning.

*Lavatory* means a basin or similar vessel used primarily for washing of the hands, arms, face, and head.

*L<sub>eq</sub>(8)* means the equivalent steady state sound level that in 8 hours would contain the same acoustic energy as the time-varying sound level during the same time period.

*Nonwater carriage toilet* means a toilet not connected to a sewer.

*Occupant* means an employee or an MOW worker (both as defined in § 228.5) whose sleeping quarters is a railroad-provided camp car.

*Ppm* means parts per million.

*Potable water* means water that meets the quality standards prescribed in the U.S. Environmental Protection Agency’s National Primary Drinking Water Standards set forth in 40 CFR part 141.

*Potable water system* means the containers, tanks, and associated plumbing lines and valves that hold, convey, and dispense potable water within a camp car.

*Toilet* means a chemical toilet, a recirculating toilet, a combustion toilet, or a toilet that is flushed with water; however, a urinal is not a toilet.

*Toilet room* means a room containing a toilet.

*Toxic material* means a material in concentration or amount of such toxicity as to constitute a recognized hazard that is causing or is likely to cause death or serious physical harm.

*Watering* means the act of filling potable water systems.

**§ 228.309 Structure, emergency egress, lighting, temperature, and noise-level standards.**

(a) *General.* Each camp car must be constructed in a manner that will provide protection against the elements.

(b) *Floors.* Floors must be of smooth and tight construction and must be kept in good repair.

(c) *Windows and other openings.* (1) All living quarters must be provided with windows the total area of which must be not less than 10 percent of the floor area. At least one-half of each window designed to be opened must be so constructed that it can be opened for purposes of ventilation. Durable opaque window coverings must be provided to reduce the entrance of light during sleeping hours.

(2) All exterior openings must be effectively screened with 16-mesh material. All screen doors must be equipped with self-closing devices.

(d) *Steps, entry ways, passageways, and corridors.* All steps, entry ways, passageways, and corridors providing normal entry to or between camp cars must be constructed of durable weather-resistant material and properly maintained. Any broken or unsafe fixtures or components in need of repair must be repaired or replaced promptly.

(e) *Emergency egress.* Each camp car must be constructed in a manner to provide adequate means of egress in an emergency situation. At a minimum, a means of emergency egress must be located in each end of the camp car for passage through each end frame.

(f) *Lighting.* Each habitable room in a camp car including but not limited to a toilet room, that is provided to an occupant must be provided with adequate lighting as specified below:

(1) When occupants are present, the pathway to any exit not immediately accessible to occupants, such as through an interior corridor, shall be illuminated at all times to values of at least 1 foot-candle measured at the floor;

(2) Toilet and shower rooms shall have controlled lighting that will illuminate the room to values of at least 10 foot-candles measured at the floor;

(3) Other areas shall have controlled lighting that will illuminate the room area to values of at least 30 foot-candles measured at the floor.

(g) *Temperature.* Each camp car must be provided with equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (F.) during cold weather and no greater than 75 degrees F. during hot weather.

(h) *Noise control.* Noise levels attributable to noise sources under the control of the railroad shall not exceed an  $L_{eq}$  (8) value of 55 dB(A), with

windows and doors closed and exclusive of noise from cooling, heating, and ventilating equipment, for any 480-minute period during which the facility is occupied.

**§ 228.311 Minimum space requirements.**

(a) Each camp car used for sleeping purposes must contain at least 50 square feet of floor space for each occupant. At least a 7-foot ceiling, measured at the entrance to the car, must be provided.

(b) A bed, cot, or bunk and suitable storage facility such as a wall locker or space for a foot locker for clothing and personal articles must be provided in every room used for sleeping purposes. Except where partitions are provided, such beds or similar facilities must be spaced not closer than 36 inches laterally (except in modular units, which shall be spaced not closer than 30 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor. If double-deck bunks are used, they must be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk must be not less than 27 inches. Triple-deck bunks may not be used.

(c) In a facility where occupants cook, live, and sleep, a minimum of 90 square feet of floor space per occupants must be provided. Sanitary facilities must be provided for storing and preparing food.

**§ 228.313 Electrical system requirements.**

(a) The National Electrical Code to which paragraphs (b) and (c) of this section refer is the 2008 version, approved by the National Fire Protection Association (NFPA) Standards Council on July 26, 2007 with an effective date of August 15, 2007.

(b) All heating, cooking, ventilation, air conditioning, and water heating equipment must be installed in accordance with the National Electrical Code governing such installations.

(c) All electrical systems installed must be compliant with the National Electrical Code, including external electrical supply connections.

(d) Each occupied camp car shall be equipped with or serviced by a safe and working HVAC system.

**§ 228.315 Vermin control.**

Camp cars shall be constructed, equipped, and maintained to prevent the entrance or harborage of rodents, insects, or other vermin. A continuing and effective extermination program shall be instituted where the presence of vermin is detected.

**§ 228.317 Toilets.**

(a) *Number of toilets provided.* (1) For each individual camp car that provides

sleeping facilities, a minimum of two toilet rooms within the car is required. If a camp car has more than 10 occupants, an additional toilet room within the car for each additional group of one to five occupants is required.

(2) A toilet rooms must be equipped with at least one functional toilet to count toward the minimum requirements of this section.

(b) *Construction of toilet rooms.* Each toilet room must occupy a separate compartment with a door that latches and walls or partitions between fixtures sufficient to assure privacy.

(c) *Supplies and sanitation.* (1) An adequate supply of toilet paper must be provided in each toilet room, unless provided to the occupants individually.

(2) Each toilet must be kept in a clean and sanitary condition and cleaned regularly when the camp car is being used. In the case of a non-water carriage toilet facility, it must be cleaned and changed regularly when the camp car is being used.

(d) *Sewage disposal facilities.* (1) All sanitary sewer lines and floor drains from a camp car toilet facility must be connected to a public sewer where available and practical, unless the car is equipped with a holding tank that is emptied in a sanitary manner.

(2) The sewage disposal method must not endanger the health of occupants.

(3) For toilet facilities connected to a holding tank, the tank must be constructed in a manner that prevents vermin from entry and odors from escaping into the camp car.

**§ 228.319 Lavatories.**

(a) *Number.* Each camp car that provides a sleeping facility must contain at least two functioning lavatories.

(b) *Water.* Each lavatory must be provided with either hot and cold running water or tepid running water. If the water supplied to a lavatory is not from a potable source or not supplied through a system maintained as required in § 228.323, the lavatory area must contain a sign, visible to the user when the lavatory is being used, bearing a message to the following effect: "The water is not suitable for human consumption. Do not drink the water."

(c) *Soap.* Unless otherwise provided by a collective bargaining agreement, hand soap or similar cleansing agents must be provided.

(d) *Means of drying.* Unless otherwise provided by a collective bargaining agreement, individual hand towels, of cloth or paper, warm air blowers, or clean sections of continuous cloth toweling must be provided near the lavatories.

**§ 228.321 Showering facilities.**

(a) *Number.* For each individual camp car that provides sleeping facilities, a minimum of two showers within the car is required. If a camp car has more than 10 occupants, an additional shower within the car for each additional group of one to five occupants is required.

(b) *Floors.* (1) Shower floors must be constructed of non-slippery materials;

(2) Floor drains must be provided in all shower baths and shower rooms to remove waste water and facilitate cleaning;

(3) All junctions of the curbing and the floor must be sealed; and

(4) There shall be no fixed grate or other instrument on the shower floor significantly hindering the cleaning of the shower floor or drain.

(c) *Walls and partitions.* The walls and partitions of a shower room must be smooth and impervious to the height of splash.

(d) *Water.* An adequate supply of hot and cold running water must be provided for showering purposes.

(e) *Signage.* If the water supplied to the showers is not from a potable source or is from a potable source but supplied through a system that is not maintained as required in § 228.323, the shower area must contain a sign, visible to the user when the shower is being used, bearing a message to the following effect: "The water is not suitable for human consumption. Do not drink the water."

(e) *Showering necessities.* (1) Unless otherwise provided by a collective bargaining agreement, body soap or other appropriate cleansing agent convenient to the showers must be provided.

(2) Showers must be provided with hot and cold water feeding a common discharge line.

(3) Unless otherwise provided by a collective bargaining agreement, each occupant who uses a shower must be provided with an individual clean towel.

**§ 228.323 Potable water.**

(a) *General requirements.* (1) Potable water shall be adequately and conveniently provided to all occupants of a camp car for drinking, personal oral hygiene, cooking, washing of foods, washing of cooking or eating utensils, and washing of premises for food preparation or processing.

(2) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, whether or not they are fitted with a cover, are prohibited.

(3) A common drinking cup and other common utensils are prohibited.

(b) *Potable water source.* (1) If potable water is provided in bottled form, it shall be stored in a manner recommended by the supplier in order to prevent contamination in storage. Bottled water shall contain a label identifying the packager and the source of the water.

(2) If potable water is drawn from a local source, the source must meet the drinking water standards established by the U.S. Environmental Protection Agency under 40 CFR part 141, National Primary Drinking Water Regulations.

(3) All equipment and construction used for supplying potable water to a camp car water system (e.g., a hose, nozzle, or back-flow prevention) shall be approved by the Food and Drug Administration.

(4) *Water hydrants.* Each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system shall be inspected prior to use. Each such hose or nozzle used shall be cleaned and sanitized as part of the inspection. A signed, dated record of this inspection shall be kept within the camp for the period of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(5) *Training.* Only a trained individual is permitted to fill the potable water systems. Each individual who fills a potable water system shall be trained in—

(i) The approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles used for filling potable water systems; and

(ii) The approved procedures to prevent contamination during watering.

(6) *Certification.* Each time that potable water is drawn from a different local source, the railroad shall obtain a certificate from a State or local health authority indicating that the water from this source is of a quality not less than that prescribed in the National Primary Drinking Water Regulations promulgated by the U.S. Environmental Protection Agency or obtain such a certificate by a certified laboratory following testing for compliance with those standards. The current certification shall be kept within the camp for the duration of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(c) *Storage and distribution system—*  
(1) *Storage.* Potable water shall be stored

in sanitary containers that prevent external contaminants from entering the potable water supply. Such contaminants include biological agents or materials and substances that can alter the taste or color or are toxic.

(2) *Dispensers.* Potable drinking water dispensers shall be designed, constructed, and serviced so that sanitary conditions are maintained, must be capable of being closed, and shall be equipped with a tap.

(3) *Distribution lines.* The distribution lines must be capable of supplying water at sufficient operating pressures to all taps for normal simultaneous operation.

(4) *Flushing.* Each potable water system shall be drained and flushed with a disinfecting solution at least once every 120 days. The railroad shall maintain a record of the draining and flushing of each separate system within the camp for the last two drain and flush cycles. The record shall contain the date of the work and the name(s) of the individual(s) performing the work. The original record shall be maintained with the camp. A copy of each of these records shall be sent to a centralized location for the railroad and maintained for one year.

(i) The solution used for flushing and disinfection shall be a 100 parts per million by volume (ppm) chlorine solution.

(ii) The chlorine solution shall be held for one hour in all parts of the system to ensure disinfection.

(iii) The chlorine solution shall be purged from the system by a complete refilling and draining with fresh potable water.

(iv) The draining and flushing shall be done more frequently if an occupant reports a taste or health problem associated with the water, or following any plumbing repair.

(5) *Reported problems.* Following any report of a taste problem with the water from a system or a health problem resulting from the water in a system, samples of water from each tap or dispensing location on the system shall be collected and sent to a laboratory approved by the U.S. Environmental Protection Agency for testing for heterotrophic plate counts, total coliform, and fecal coliform. If a single sample fails any of these tests, the system must be treated as follows:

(i) Heterotrophic plate count. Drain and flush the system within two days, and then return it to service.

(ii) Total coliform. Remove the system from service, drain and flush system, resample the system, and then return the system to service.

(iii) Fecal coliform. Remove the system from service, drain and flush the system, resample the system, and do not return the system to service until a satisfactory result on the test of the samples is obtained from the laboratory.

(6) *Reports.* All laboratory reports pertaining to the water system of the camp car shall be maintained with the car. Within 15 days of the receipt of such a laboratory report, a copy of the report shall be posted for a minimum of 10 calendar days at a conspicuous location within the camp car or cars affected for review by occupants. The report shall be maintained in the camp for the duration of the same connection. When the connection is terminated, the certification must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

**§ 228.325 Food service in a camp car or separate kitchen or dining facility in a camp.**

(a) *Sanitary storage.* No food or beverage may be stored in a toilet room or in an area exposed to a toxic material.

(b) *Consumption of food or beverage on the premises.* No occupant shall be allowed to consume a food or beverage in a toilet room or in any area exposed to a toxic material.

(c) *Kitchens, dining halls, and feeding facilities.* (1) In each camp car where central dining operations are provided by the railroad or its contractor(s) or subcontractor(s), the food handling facilities shall be maintained in a clean and sanitary condition. See § 228.323, Potable water, generally.

(i) All surfaces used for food preparation shall be disinfected after each use.

(ii) The disinfection process shall include removal of chemical disinfectants that would adulterate foods prepared subsequent to disinfection.

(2) All perishable food shall be stored either under refrigeration or in a freezer. Refrigeration and freezer facilities shall be provided with a means to monitor temperature to ensure proper temperatures are maintained. The temperature of refrigerators shall be maintained at 40° Fahrenheit or below; the temperature of freezers shall be maintained at 0° Fahrenheit or below at all times.

(3) All non-perishable food shall be stored to prevent vermin and insect infestation.

(4) All food waste disposal containers shall be constructed to prevent vermin and insect infestation.

(i) All food waste disposal containers used within a camp car shall be emptied after each meal, or at least every four hours, whichever period is less.

(ii) All food waste disposal containers used outside a camp car shall be located to prevent offensive odors from entering the sleeping quarters.

(5) When separate kitchen or dining hall car is provided, there must be a closeable door between the living or sleeping quarters into a kitchen or dining hall car.

(d) *Food handling.* (1) All food service facilities and operations for occupants of a camp car by the railroad or its contractor(s) or subcontractor(s) shall be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed must be wholesome, free from spoilage, and must be processed, prepared, handled, and stored in such a manner as to be protected against contamination. See § 228.323, Potable water, generally.

(2) No person with any disease communicable through contact with food or a food preparation item may be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or a material used therein, in a kitchen or dining facility operated in or in connection with a camp car.

**§ 228.327 Waste collection and disposal.**

(a) *General disposal requirements.* All sweepings, solid or liquid wastes, refuse, and garbage in a camp must be removed in such a manner as to avoid creating a menace to health and as often as necessary or appropriate to maintain a sanitary condition.

(b) *General waste receptacles.* Any exterior receptacle used for putrescible solid or liquid waste or refuse in a camp shall be so constructed that it does not leak and may be thoroughly cleaned and maintained in a sanitary condition. Such a receptacle must be equipped with a solid tight-fitting cover, unless it can be maintained in a sanitary condition without a cover. This requirement does not prohibit the use of receptacles designed to permit the maintenance of a sanitary condition without regard to the aforementioned requirements.

(c) *Food waste disposal containers provided for the interior of camp cars.* An adequate number of receptacles constructed of smooth, corrosion resistant, easily cleanable, or disposable materials, must be provided and used for the disposal of waste food. Receptacles must be provided with a solid tight-fitting cover unless sanitary

conditions can be maintained without use of a cover. The number, size, and location of such receptacles must encourage their use and not result in overfilling. They must be emptied regularly and maintained in a clean, safe, and sanitary condition.

**§ 228.329 Housekeeping.**

(a) A camp car must be kept clean to the extent allowed by the nature of the work performed by the occupants of the camp car.

(b) To facilitate cleaning, every floor, working place, and passageway must be kept free from protruding nails, splinters, loose boards, and unnecessary holes and openings.

**§ 228.331 First aid.**

(a) An adequate first aid kit must be maintained and made available for occupants of a camp car for the emergency treatment of an injured person.

(b) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked at least weekly when the camp car is occupied to ensure that the expended items are replaced. The first aid kit shall contain, at a minimum, the following:

- (1) Two small gauze pads (at least 4×4 inches);
- (2) Two large gauze pads (at least 8×10 inches);
- (3) Two adhesive bandages;
- (4) Two triangular bandages;
- (5) One package of gauge roller bandage that is at least two inches wide;
- (6) Wound cleaning agent, such as sealed moistened towelettes;
- (7) Two elastic wraps;
- (8) Five antibiotic ointment packages;
- (9) Two packets of aspirin;
- (10) Two hydrocortisone ointment packets;
- (11) One pair of scissors;
- (12) One set of tweezers;
- (13) One roll of adhesive tape;
- (14) Two pairs of latex gloves;
- (15) One resuscitation mask; and
- (16) One first aid instruction booklet.

**§ 228.333 Repairs.**

A railroad shall, within 72 hours after notice from the Federal Railroad Administration of noncompliance with this subpart, correct each non-complying condition on the camp car or cease use of the camp car as sleeping quarters for each occupant. In the event that such a condition affects the safety or health of an occupant, such as water, cooling, heating, or eating facilities, the railroad must immediately upon notice provide alternative arrangements for

housing and providing food to the employee or MOW worker until the condition adverse to the safety or health of the occupant(s) is corrected.

**§ 228.335 Electronic recordkeeping.**

(a) Each railroad shall keep records in accordance with § 228.323 pertaining to its compliance with this subpart. Records may be kept either on paper forms provided by the railroad or by electronic means in a manner that conforms with § 228.323.

(b) Records required to be kept shall be made available to the Federal Railroad Administration as provided by 49 U.S.C. 20107.

**Appendix A to Part 228 [Amended]**

14. The last paragraph of the discussion headed "Sleeping Quarters" in Appendix A to part 228 is removed.

**Appendix C to Part 228 [Removed]**

15. Appendix C to part 228 is removed.

Issued in Washington, DC, on December 23, 2010.

**Jo Strang,**

*Associate Administrator for Railroad Safety/  
Chief Safety Officer, Federal Railroad  
Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety  
Administration**

**49 CFR Part 571**

[Docket No. NHTSA-2007-26851]

**Federal Motor Vehicle Safety Standard;  
Engine Control Module Speed Limiter  
Device**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of petition for rulemaking.

**SUMMARY:** This notice grants two separate but similar petitions for rulemaking, one submitted by the American Trucking Associations and the other submitted by Road Safe America and a group of nine motor carriers (Schneider National, Inc., C.R. England, Inc., H.O. Wolding, Inc., ATS Intermodal, LLC, DART Transit Company, J.B. Hunt Transport, Inc., U.S. Xpress, Inc., Covenant Transport, Inc., and Jet Express, Inc.) to establish a safety standard to require devices that would limit the speed of certain heavy trucks. Based on information received in response to a request for comments,<sup>1</sup> the

National Highway Traffic Safety Administration believes that these petitions merit further consideration through the agency's rulemaking process. In addition, because of the overlapping issues addressed in these two petitions, the agency will address them together in a single rulemaking activity.

The National Highway Traffic Safety Administration plans to initiate the rulemaking process on this issue with a Notice of Proposed Rulemaking in 2012. The determination of whether to issue a rule will be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202-366-0098; FAX: 202-366-7002). For legal issues, you may call Mr. Steve Wood, Assistant Chief Counsel for Vehicle Rulemaking and Harmonization, (Phone: 202-366-2992; FAX: 202-366-3820). You may send mail to this official at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 20, 2006, the American Trucking Associations (ATA) submitted a petition to the National Highway Traffic Safety Administration (NHTSA) requesting that the agency initiate rulemaking to amend the Federal motor vehicle safety standards to require vehicle manufacturers to install a device to limit the speed of trucks with a gross vehicle weight rating (GVWR) greater than 26,000 pounds to no more than 68 miles per hour (mph). The ATA claimed that reducing speed-related crashes involving trucks is critical to the safety mission of NHTSA, and that these new requirements are needed to reduce the number and severity of crashes involving large trucks.

On September 8, 2006, Road Safe America and a group of nine motor carriers also petitioned the agency to require that manufacturers install a speed limiting device in vehicles with a GVWR over 26,000 pounds and that the devices be set at not more than 68 mph. They also requested that the requirements apply to all trucks manufactured after 1990.

**Summary of the Petitions**

A detailed discussion of the two petitions can be found in the request for comments notice. Items specific to NHTSA include the following requests from ATA:

1. All newly manufactured trucks with a GVWR greater than 26,000 pounds shall be equipped with an electronic control module (ECM) that is capable of limiting the maximum speed of the vehicle.

2. The ECM shall be set at no more than 68 mph by the manufacturer.

3. The ECM should be tamper-resistant, and should be designed in a way that does not allow the speed limiter setting on the ECM to be adjusted to let the vehicle exceed 68 mph.

4. Immediately upon the rule taking effect, manufacturers should be prohibited from setting the ECM speed limiter to a maximum speed of greater than 68 mph. However, this requirement should not take effect earlier than the effective date of a Federal Motor Carrier Safety Administration (FMCSA) rule prohibiting vehicle owners or operators from setting the ECM speed limiter at a level greater than 68 mph for newly manufactured trucks.

5. The effective date for installation of a tamper-resistant ECM should be established with a period of time that will allow manufacturers to undergo a systems integration process. The change to the engine ECM may affect other devices on the vehicle; therefore, manufacturers need some time to ensure that the vehicle functions properly. ATA encourages NHTSA to seek information from manufacturers to determine the length of time necessary to come into compliance with the rule.

6. An appropriate tolerance to accommodate variations in manufacturing, wear, and maintenance throughout the lifecycle of the vehicle. For example, the same diameter heavy truck tire but with a different width and sidewall aspect ratio may have a 15-20 revolutions per mile difference which will affect the actual top speed of the truck with a governed speed of 68 mph. ATA recommends that any rulemaking pertaining to this petition reference SAE J678, J862, and J1226 Recommended Practices.

In addition to items similar to those in ATA's petition, Road Safe America also included an item on retrofitting in its petition:

1. Every class 7 and class 8 commercial motor vehicle manufactured after the year 1990 shall be equipped with an electronic engine speed governor.

**Summary of Comments**

On January 26, 2007, NHTSA and FMCSA published a joint Request for Comments Notice in the **Federal Register** soliciting public comments on

<sup>1</sup> 72 FR 3904; January 26, 2007.