

Sorenson's Petition for Reconsideration *is granted*, to the extent provided in FCC 11–155. AT&T's Petition for Reconsideration *is denied*.

Part 64 of the Commission's rules *is amended*.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 11–155, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch**,  
Secretary.

#### Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

- 1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254(k), 227; secs. 403(b)(2)(B), (c), Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, 254(k), 616, and 620, unless otherwise noted.

#### Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

- 2. The authority citation for subpart F is revised to read as follows:

**Authority:** 47 U.S.C. 151–154; 225, 255, 303(r), 616 and 620.

- 3. Section 64.606 is amended by revising paragraphs (a)(2)(ii)(A)(4) and (5), by adding paragraphs (a)(2)(ii)(A)(6) through (8), and by revising paragraph (a)(2)(ii)(E) to read as follows:

#### § 64.606 Internet-based TRS provider and TRS program certification.

- (a) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*  
(A) \* \* \*

(4) A description of the technology and equipment used to support their call center functions—including, but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration—and for each core function of each call center for

which the applicant must provide a copy of technology and equipment proofs of purchase, leases or license agreements in accordance with paragraphs (a)(2)(ii)(A)(5) through (7) of this section, a statement whether such technology and equipment is owned, leased or licensed (and from whom if leased or licensed);

(5) Operating five or fewer call centers within the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant within the United States;

(6) Operating more than five call centers within the United States, a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions for a representative sampling (taking into account size (by number of communications assistants) and location) of five call centers operated by the applicant within the United States; a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions for all call centers operated by the applicant within the United States must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

(7) Operating call centers outside of the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant outside of the United States; and

(8) A complete copy of each lease or license agreement for automatic call distribution.

\* \* \* \* \*

(E) For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including on that list a description of any associated written agreements; copies of all such arrangements and agreements must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

\* \* \* \* \*

[FR Doc. 2011–28135 Filed 10–28–11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 228

[Docket No. FRA–2009–0042, Notice No. 2]

RIN 2130–AC13

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

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

**ACTION:** Final rule.

**SUMMARY:** To carry out a 2008 Congressional rulemaking mandate, FRA is creating 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 (covered-service employees) and individuals employed to maintain its right of way.

Under separate but related statutory authority, FRA is also amending its regulations regarding construction of employee sleeping quarters. In particular, 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 are being 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 is making miscellaneous changes clarifying its provision on applicability, removing an existing provision on the preemptive effect of the regulations as unnecessary, and moving, without changing, an existing provision on penalties for violation.

**DATES:** This final rule is effective December 30, 2011.

**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. Background Information

### A. Statutory, Regulatory, and Factual Background

Having considered the public comments on FRA's January 3, 2011, proposed rule in this rulemaking, FRA is issuing this final rule primarily to help satisfy the requirements of section 420 of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. 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). See notice of proposed rulemaking (NPRM), 76 FR 64. 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).

In addition, RSIA directly requires that railroads using camp cars "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 (1) 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 (2) 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(oo). 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.

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 developing new subpart E, FRA coordinated with the U.S. Department of Labor, as required by the Congressional mandate.

In addition, FRA consulted with officials of the only American railroad currently known to be regularly 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 assured FRA that all of its camp cars comply with statutory requirements; NS disagrees with FRA's conclusion that camp cars exclusively occupied by MOW workers are 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 humping operations. That protection formerly only applied to train employees, signal employees, and dispatching service 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. Pub. L. 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." Pub. L. 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) (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, 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, FRA published regulations codified at 49 CFR part 228, subpart C (subpart C). 43 FR 31012 (July 19, 1978). 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

<sup>1</sup> In the 1994 recodification of Federal transportation laws, the Hours of Service Act was repealed, and its provisions were reenacted as revised, and recodified as positive law primarily in 49 U.S.C. chapter 211. Pub. L. 103-272, July 5, 1994.

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 DOT 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. Pub. L. 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 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 Public Law No. 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.

#### B. Comments on the NPRM

FRA received two sets of comments on the NPRM, one from the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED) and one from the Association of American Railroads (AAR). FRA appreciated and carefully considered both of these sets of comments. The final rule differs from the proposed rule in part because of the concerns raised by the commenters. FRA, however, believes that it lacks the authority to address all of the issues raised. Comments are addressed thematically.

#### 1. Statutory Limitations

BMWED requested a prohibition on the use of railroad-provided camp cars as sleeping quarters for employees and MOW workers within five years of the effective date of the rule. FRA does not believe Congress intended to give FRA such authority. The statutory section requiring FRA to regulate camp cars begins, "A railroad carrier and its officers and agents may provide sleeping quarters \* \* \* for employees, and any individuals employed to maintain the right of way of a railroad carrier \* \* \*" 49 U.S.C. 21106(a)(1). With this language, Congress has expressly given permission to railroads to provide sleeping quarters as long as they meet the applicable statutory or regulatory standard, or both. FRA may not prohibit by regulation what Congress has explicitly permitted by statute.

FRA has also attempted to comply with the statutory language by limiting the applicability section of subpart C. Congress was specifically concerned with sleeping quarters provided to employees by a railroad and camp car sleeping quarters provided to MOW workers by a railroad. As a result, FRA stated that subpart C applies to railroads but not subcontractors or contractors, something BMWED commented on. If a railroad provides a standard camp car to an employee or MOW worker, however, the railroad will be held liable, whether the camp car was directly provided by the railroad or whether the railroad was leasing a camp car from a contractor. See 49 CFR 228.303(b) and 228.305. FRA is concerned that including contractor-provided sleeping quarters would inadvertently encompass rooms in commercial motels or hotels open to the general public that a railroad provided to its employees. To further clarify FRA's position, however, FRA has modified the language of § 228.303 to expressly state that the requirements of this subpart apply to contractors and subcontractors that provide camp cars.

BMWED also took issue with another matter in which FRA was, in part, trying to comply with the statute. BMWED argued that the temporary labor camps regulations of the Occupational Safety and Health Administration (OSHA) should not be a basis for subpart E. FRA did not extensively rely on temporary labor camp regulations in creating subpart E; however, they did provide the basic framework for the previous camp car guidelines, and FRA found it necessary to use those guidelines in creating this subpart. FRA was also required by section 420 of the RSIA to

work in consultation with the Department of Labor in creating these regulations, and FRA found its regulations helpful. FRA does recognize that there are significant differences between temporary labor camps and the current way that NS uses camp cars, but found OSHA's regulations to be helpful, as there are few other Federal regulations regarding employer-provided sleeping quarters. The only other comment in which statutory provisions were at issue came from AAR. As mentioned in the NPRM, NS disagreed with FRA's statutory interpretation that sleeping quarters provided to MOW workers were, like those provided to covered-service employees, restricted on how close they may be to switching and humping operations. AAR stated that it supports NS's interpretation. There is ample discussion regarding FRA's position on this issue stated above and in the NPRM.

For its part, BMWED expressed its support for FRA's interpretation on this issue, but expressed concerns that the rights of MOW workers were not adequately protected. Specifically, BMWED wanted FRA to expressly say that the recognized representatives of the MOW workers be given the same notice when a railroad attempts to obtain permission to begin to construct or reposition a camp car too close to switching and humping operations. Under § 228.103(d), representatives of railroad employees of camp cars must be given such notice. BMWED's request is unnecessary, as the proposed rule states that for the purposes of § 228.103, "employees" "shall be read to include MOW workers." With this language found in § 228.102(b), FRA is requiring that the same rights and notice given to the employees and their recognized representatives under § 228.103 is given to MOW workers and their recognized representatives.

#### 2. Life Safety Issues

##### a. Smoke Alarms and Fire Extinguishers

BMWED recommended that each camp car be equipped "with a portable fire extinguisher(s) meeting the requirements of 29 CFR 1910.157, a fire detection system meeting the requirements of 29 CFR 1910.164, and permanently wired, with battery backup, smoke detector(s) and carbon monoxide detector(s)."

FRA agrees in principle with the desire for these life safety protection items; however, some of the proposed devices are not practical. Requiring smoke detectors and carbon monoxide detectors to be hard-wired may result in

added cost and complexity where simple battery-powered detectors can be used with little difference in protection. Many newer model smoke detectors are equipped with 10-year lithium batteries.

A fire detection system meeting the requirements of 29 CFR 1910.164 is not appropriate. The standard cited by BMWED is a performance specification for systems intended to meet other specific OSHA standards such as those for fuel or flammable materials storage areas. While meeting this OSHA standard is not necessary for camp cars, FRA will add paragraph (c) to § 228.331 as set forth in the regulatory text of this final rule.

#### b. Weather and Medical Information

BMWED also recommended requiring each camp car to have emergency evacuation instructions and information regarding the nearest hospital and have a weather radio. FRA agrees that camp car occupants need to have access to information in case of weather and medical emergencies, but has decided to address these needs by adding paragraph (d) to § 228.331 as set forth in the regulatory text of this final rule.

#### c. First Aid Kits (Proposed § 228.331)

AAR objected to FRA's proposed § 228.331, which specified and listed the minimum contents of first aid kits. AAR urged FRA to take a consistent approach to first aid kits. FRA's proposed § 228.331 differed from its regulation on passenger train emergency preparedness at 49 CFR 239.101(a)(6) by adding the requirements of a first aid booklet, aspirin, antibiotic ointment packages, and hydrocortisone ointment packets. FRA agrees that it should be consistent. As a result, FRA has changed the requirements for the first aid kit required by this subpart to conform with those of 49 CFR 239.101(a)(6).

#### 3. Camp Car Environment

BMWED requested that FRA restrict the locations where camp cars are located to avoid standing water and other potential hazards. Specifically, it requested the following requirements:

All camp car locations must be adequately drained, graded, and rendered free from depressions that pose a tripping hazard or allow water to collect. Camp car locations shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water. The discharge of "gray water" from camp car lavatories and showers shall be prohibited unless permitted by local laws and ordinances; however, in no case shall "gray water" from lavatories and showers be discharged closer than 200 feet of any camp car. Camp cars shall be located so the drainage from and through the location will

not endanger any domestic or public water supply.

FRA recognizes that the issues identified in this comment may arise in some circumstances; however, they are not within the scope of the mandate nor within the agency's scope of regulatory expertise. The mandate language at 49 U.S.C. 21106(c) clearly is intended to address the camp cars themselves, not the conditions of the railroad property or adjacent private property on or near which they are located.

BMWED asked FRA to require gender-separated camp car facilities for "sleeping, showering, washing, urination and defecation." FRA does not believe that this provision is necessary at this time, nor is FRA aware of any problems stemming from a lack of such gender-separated facilities. FRA is, however, concerned about the possibility that a married couple might be working together, and the railroad might want to respect that couple's wish to stay in the same camp car. If FRA learns of problems stemming from the lack of gender-separated facilities, it will take appropriate action.

#### 4. Furnishings (Proposed § 228.311)

BMWED also had suggestions on the furnishings provided to camp car occupants. It recommended, among other things, a prohibition against cots, multi-deck bunks (which are built into or against a wall, such as in a Pullman car), and multi-level bunk beds (which are movable). FRA agrees that a prohibition on multi-deck bunks and multi-level bunk beds is a reasonable prohibition, given that falls from multi-deck bunks and multi-level bunk beds are possible and falls from an upper deck would obviously tend to cause more severe injury than falls from an ordinary, single-level bunk or single-level bed. The U.S. Consumer Product Safety Commission determined that multi-level bunks and multi-level bunk beds provided a sufficient hazard so as to require regulations to limit their hazards. See 16 CFR part 1213 *et seq.* FRA also notes that BMWED states that this prohibition would not have any cost, as NS does not currently use multi-level bunks or multi-level bunk beds in its camp cars for employees and MOW workers.

FRA, however, disagrees with BMWED's suggested prohibition on "cots" at this time. FRA realizes that cots can vary widely, and FRA expects any bed or cot provided under § 228.311 to be a unit for sleeping, consisting of a base and mattress. NS, the only railroad that uses camp cars as sleeping quarters for employees or MOW workers, uses beds only and does not

use a cot in the sense of a unit used for sleeping made of canvas over a frame that can be folded up and lacking a mattress. If NS or another railroad chooses to use a cot that does not have a mattress in a camp car that it provides as sleeping quarters, FRA will revisit this issue.

BMWED also requested that the lockers provided to the employees and MOW workers be lockable. FRA finds this to be a reasonable request, as the cost of locks should be minimal. Employees and MOW workers live in these camp cars for days or weeks at a time, and being able to secure their valuables could help alleviate stress and anxiety regarding the potential theft.

#### 5. Minimum Lateral Spacing Requirement (Proposed § 228.311)

FRA's proposed § 228.31(b) would have required that beds not be closer than 36 inches laterally, with modular units subject to a 30-inch minimum and double-deck bunks no closer than 48 inches laterally. AAR objected that the provision would be problematic for some in-service camp cars. It mentioned that the width of highway-capable camp cars is limited by existing DOT restrictions. AAR suggested, and FRA adopts, the following change: "Except where partitions are provided, such beds or similar facilities must be spaced not closer than 36 inches laterally (except in rail-mounted modular units, where the beds shall be spaced not closer than 30 inches, and highway trailer units, where the beds shall be spaced not closer than 26 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor."

#### 6. Cleaning (Proposed § 228.329)

BMWED also commented on cleaning requirements. For example, BMWED suggested that FRA change the requirement in § 228.329(a) from simply stating that a camp car must be kept "clean" to use the phrase "clean, healthful, and sanitary," and include a short explanation of the division of responsibility between the railroad and camp car occupants. FRA agrees that railroads are responsible for the regular and thorough cleaning of all camp car facilities, and that camp car occupants should use good housekeeping practices. FRA, however, does not believe that this suggestion substantively changes the proposed requirements, and so refrains from altering the proposed language of the regulation itself. FRA believes that the requirements of this subpart ensure that camp cars will be kept clean, healthful, and sanitary.

BMWED also requested that FRA require railroads to provide each occupant with two sets of clean bed linens and also exchange them, upon request, for clean linens when they are soiled. NS has notified FRA that, under the terms of two differing collective bargaining agreements, railroad employees either currently receive reimbursement for providing and laundering linens or are given reimbursement for providing their own linens. FRA will not interfere regarding linens when they are being provided under the terms of a collective bargaining agreement. FRA recognizes, however, that sweat and body fluids can accumulate on linens, posing a health hazard from potential viruses and bacteria growing in them. Health risks are compounded if someone sleeps on the unwashed sheets of another. FRA believes a collective bargaining agreement is the most appropriate method to ensure that occupants have clean sheets, but has added a requirement that clean linens be provided if a provision on the subject of linens in the applicable collective bargaining agreement does not exist.

#### Inspections

BMWED asked for a regulatory right for a representative of the employee labor organization to accompany FRA inspectors during a camp car inspection. It points out that OSHA allows for a representative of employee labor organizations to accompany OSHA inspectors. FRA declines to create such a right. FRA prefers to have unannounced inspections. If a camp car occupant has a concern that these regulations are not being adhered to, that employee or an employee's representative may alert FRA. When an individual contacts FRA regarding a railroad's failure to adhere to the law, FRA investigates the complaints and makes every effort to comply with statutory prohibitions and agency policy not to reveal the identity of that individual unless the individual has consented to the release. *See* 49 U.S.C. 20109(i).

#### 7. Definitions (Proposed § 228.5)

##### a. "Camp Car" Definition

In its comment, AAR recommended that FRA modify the definition of "camp car" to explicitly exclude office cars, inspection cars, and specialized maintenance equipment. FRA does not intend to include any cars in this subpart that are not used as sleeping quarters or ancillary to such sleeping quarters. FRA does not consider track geometry cars and similar cars to "house

or accommodate" MOW workers in the way that sleeping and dining room cars do. For clarity, however, FRA has amended the definition of "camp car" to make this intent explicit.

##### b. "MOW Worker" Definition in Proposed § 228.5

In the NPRM, FRA proposed a definition of "MOW worker" as someone who was "an individual employed to maintain the right of way of a railroad," which is the singular language of the hours of service laws, slightly shortened. *See* 49 U.S.C. 21106(a)(1) ("any individuals employed to maintain the right of way of a railroad carrier"). BMWED suggested that definition be elaborated to say "an individual employed to inspect, install, construct, repair or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and right of way of a railroad." To clarify the scope of the definition, FRA has accepted this change in the definition intact except to add a comma after "repair." It is not necessary for the individual to be employed by a railroad; the individual may be employed by a contractor or subcontractor to a railroad.

#### 8. Minimum Space Standards and Bathroom Requirements (Proposed §§ 228.311, 228.317 to 228.321)

Proposed § 228.311 suggested a minimum amount of 50 square feet of floor space for each occupant of a camp car used for sleeping. BMWED disputed that this amount of space was sufficient, and suggested that more appropriate standards included a minimum of 80 square feet with a maximum occupancy of four people per car. The organization pointed out that the cost of compliance for this standard is essentially zero, as NS already provides this minimum amount of space. FRA agrees that this suggested change is reasonable and will prevent overcrowding.

In addition, for camp cars that are used for general living as well as cooking, BMWED recommended that the minimum square feet per occupant be increased from 90 to 120 square feet. FRA also agrees with this change to help prevent overcrowding. FRA notes that adopting this amendment should present no current cost to any railroad, as NS does not presently use camp cars in which occupants both sleep and cook.

In the NPRM, FRA proposed a minimum of two toilet rooms and two showers in each camp car that provides sleeping facility and an additional toilet room and shower for every one to five

more people after ten occupants. The NPRM suggested only two lavatories per camp car. BMWED recommended that if a camp car has more than four occupants, an additional toilet room and shower and lavatory should be required for every one or two more people. For its part, AAR requested requiring a fewer number of showers, lavatories, and toilets when there were fewer than four occupants. FRA sees the value in each of these proposals, and notes that the projected cost of this change from the NPRM is zero, as NS already complies with BMWED's proposal. FRA has lowered the minimum number of these fixtures required when a camp car has fewer than four occupants. The final rule requires one functional lavatory, shower, and toilet per camp car for up to two occupants, and one additional functional lavatory, shower, and toilet if there are three or four occupants in the camp car.

#### 9. Lighting (Proposed § 228.309)

BMWED requested that the minimum lighting for toilet and shower rooms be increased from the 10 foot-candles required in the proposed § 228.309(f)(2) to 30 foot-candles. OSHA standards require only 10 foot-candles for indoor toilets; 30 foot-candles are required for areas, such as offices, where more visually demanding tasks are done. 29 CFR 1926.56(a). Because of the limited size of toilet rooms, FRA does not believe that it is necessary for the requirements for lighting in bathrooms to be increased to the same level as an office.

#### 10. Temperature of Camp Car (Proposed § 228.309)

The NPRM proposed that each car must have equipment so that it can maintain a minimum temperature of 68 degrees Fahrenheit (°F) in cold weather and a maximum temperature of 75 °F in hot weather. § 228.309(g). BMWED requested that the minimum temperature be changed to 70 °F. FRA declines to do so, as it is likely that such a small difference is within the reading error of some thermometers. AAR also objected to FRA's proposed temperature requirement.

AAR requested that FRA prescribe a maximum temperature of 78 °F, as was set forth in appendix C to part 228. AAR stated that it was unaware of any problems with the 78 °F threshold. It also objected to a change proposed by FRA that was different from the guidelines of appendix C and allowed the maximum temperature to be only 20 °F below the ambient temperature. AAR stated that

differential cooling systems are limited by what they can achieve relative to the ambient temperature. FRA declines to make these changes.

FRA believes that modern air conditioning equipment on these cars is capable of providing the requisite cooling to offer the workers a respite from warm conditions that could interfere with the ability to get adequate rest. If a temperature of 78 °F is achievable by these systems, it seems unlikely that 75 °F would not be. With respect to the absence of the 20 °F differential from ambient as an alternative cooling standard, FRA believes this could lead to permitting significantly higher allowable temperatures that would have an adverse impact on the workers' ability to get adequate rest, particularly in some of the warmer climates in which these cars operate.

#### 11. Emergency Egress (Proposed § 228.309)

AAR requested that doors for emergency egress not be required at each end, as would be required by the proposed § 228.309(e). FRA agrees that the NPRM language is needlessly specific and agrees to amend that section.

In addition, AAR suggested that FRA modify its proposed requirement of § 228.309(f) for illumination of exit pathways. AAR stated,

[p]roposed paragraph 228.309(f)(1) requires that pathways not immediately accessible to occupants should be illuminated at all times. However, literally interpreted, this requirement could be read as requiring that lights be kept on in sleeping quarters, which would, of course, disturb the sleep of occupants. If the sleeping quarters are at opposite ends of a camp car, under this paragraph the sleeping quarters would have to be illuminated because the occupants would have to pass through the sleeping quarters to get to the secondary exits, *i.e.*, an occupant in one end of the car would have to pass through sleeping quarters to get to the exit at the other end of the car.

FRA agrees that the NPRM language is somewhat ambiguous and agrees to adopt the AAR's proposed change, with two additional commas, as follows:

§ 228.309(f)(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, provided that where the pathway passes through a sleeping compartment, the pathway up to the compartment will be illuminated, but illumination is not required inside the sleeping compartment.

#### 12. Water Issues

##### a. Potability (Proposed §§ 228.319–228.323)

In its comment, BMWED stated its opposition to allowing non-potable water to be used for the washing and showering of persons. See proposed §§ 228.319–228.323. It pointed to OSHA's regulation, 29 CFR 1910.141(b)(1)(i), which requires potable water for the washing of the person in places of employment. FRA will follow OSHA's lead in requiring that water used for personal cleansing in the sinks and showers of camp cars be potable. FRA has changed the rule text accordingly.

For its part, AAR objected to the requirement of proposed § 228.323 that a railroad must obtain a certificate of compliance with EPA drinking water regulations every time potable water is drawn from a different local source. AAR stated that this was impractical and is unnecessary. It argued that, most of the time, water for camp cars came from a municipal community water system via spigots on the outside of buildings.

FRA does not agree with AAR's arguments. Its assertions that water drawn from a municipal community water system must be assumed to be potable, even after being conveyed through a portable, removable system of connections, pipes, and tanks, is not credible. In fact, during a visit to a NS camp, the water system was connected to a municipal building through a series of pipes and hoses on the surface of a parking lot. This circumstance could easily lead to a compromised system that could introduce contamination into the water, rendering it non-potable.

FRA agrees that community water sources are regulated and the water is potable when leaving the water supplier. However, FRA has no means of assurance that the water from the taps AAR mentions is in fact of the same quality. Further, the minority of circumstances where the water is not drawn from a community water system source are minimally addressed in the AAR comments. While the materials and systems components used by NS may be made of FDA-approved materials, that does not preclude the introduction of contamination into the system due to improper procedures setting up the connections, nor through damage to the components after they have been set up.

FRA's desire for either a certificate of conformance, or a similar certificate from a laboratory is to ensure that the water entering the camp car system is, at the source, of potable quality. The

other testing requirements contained in the section are intended to ensure that once potable water is introduced into the system, it is delivered in that form to the users. The FDA has specific regulations regarding the source quality of potable water for use on "a conveyance engaged in interstate traffic" at 21 CFR 1240.80, 1240.83, and, for treatment once aboard the conveyances, at 21 CFR 1240.90. FRA is simply restating these precepts.

##### b. Cleaning of Potable Water Systems (Proposed § 228.323)

AAR also objected to the requirement of proposed § 228.323(c)(4) that potable water systems be drained and flushed regularly and after any complaint. As discussed above, however, the introduction of contaminants into a water system can occur through any of a number of sources, both through damage to the system connections, as well as through back flow through any of the system's internal outlets. Even under normal circumstances of use, where the water is consumed and refilled on a frequent basis, quarterly disinfection and flushing have been used, under an FDA-approved process, on Amtrak passenger cars for a number of years. By AAR's own admission, camp cars may move on a frequent basis, thus the opportunities for introduction of contaminants into the potable water system exist. The two procedures established by this regulation thus parallel those used to protect Amtrak passengers and crews and should be no more burdensome, and in fact are likely less so, for NS since its fleet and movement frequency are much less.

##### c. Water Temperature (Proposed § 228.319)

In addition, BMWED also stated that there was no reason for § 228.319 to allow for only tepid water—as opposed to both hot and cold water—to be provided in lavatories. It stated that the water for sinks came from a plumbing system that provided both hot and cold water. Since this is a reasonable request that apparently can be provided with minimal or no cost to the only railroad actively using camp cars, FRA has changed § 228.319 to require hot and cold water in lavatories.

##### d. Training (Proposed § 228.323)

BMWED also requested that any individual who fills a potable water system as required by this subpart be "properly trained, qualified and designated by the employer." FRA's proposed § 228.323(b)(5) required only that the person filling the potable water

system be trained. FRA does not see the value of BMWED's suggestion.

e. Response to Failed Test of Water (Proposed § 228.323)

The organization also requested that FRA prohibit the return to service of a camp car whose water system failed a total coliform test until test samples from that system show a satisfactory result. Proposed § 228.323(c)(5) simply states that the system needs to be resampled and then it may be returned to service. The original language of the proposed regulation follows FDA-approved protocols currently used for water systems on conveyances in interstate commerce. The recommended change is not necessary.

13. Waste Disposal From a Food Service Facility (Proposed § 228.325)

BMWED requested in its comment more stringent controls on waste disposal methods to protect the safety and health of occupants. It requested changes to be added to § 228.325(c). FRA agrees with these changes and has adopted them in this final rule.

14. Repairs (§ 228.333)

In the NPRM, FRA asked for comments regarding the amount of time that a railroad should be given to repair significant noncomplying conditions in a camp car under proposed § 228.333, which gave the railroad 72 hours after notice of noncompliance with this subpart from FRA. In response, BMWED recommended the following substitute:

A railroad shall, within 24 hours after receiving a good faith notice from a camp car occupant or an employee labor organization representing camp car occupants or 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, but not limited to, water, cooling, heating, or eating facilities, sanitation issues related to food storage, food handling or sewage disposal, vermin or pest infestation, electrical hazards, etc., 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. As used in this section "immediately" means prompt, expeditious and without delay.

While FRA does not believe a definition of "immediately" is necessary, it otherwise agrees with the recommended changes and has adopted them.

## II. Section-by-Section Analysis

### Part 228

#### Section 228.1 Scope

FRA is revising the heading of 49 CFR part 228 to reflect all of its contents more explicitly. The name of the part is being changed from "HOURS OF SERVICE OF RAILROAD EMPLOYEES" to "HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS".

#### Subpart A of Part 228

FRA is tailoring § 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).

#### Section 228.3 Application

FRA also is amending § 228.3, Application. Currently, paragraph (a) of that section says that, except as provided in paragraph (b), part 228 applies to all railroads and contractors and subcontractors of railroads. FRA is revising the section to indicate that although subparts B and D of part 228 apply to railroads and contractors and subcontractors of railroads, subparts C and E of part 228 apply only to railroads. (Subpart A contains no duties that apply to any entity.) In addition, § 228.3 is being amended to clarify that plant railroads are exempt from the requirements of subparts B–E of part 228. The section is also being amended to note that tourist, scenic, historic, and excursion railroads that are not part of the general system are generally excepted from subparts B–E except as provided in § 228.413(d)(2). See 76 FR 50360, 50400 (August 12, 2011). Section 228.3 also is being amended to move its existing reference to § 228.401 as the applicability section for subpart F, Substantive Hours of Service Regulations for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation, from paragraph (b) to paragraph (c). *Id.*

#### Section 228.5 Definitions

Finally, FRA is amending § 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 the new subpart E, and both terms refer to types of operations that have traditionally been excluded from FRA regulations because they are not part of the general railroad system of

transportation. (Note, however, that, e.g., all tourist railroads are subject to the substantive hours of service requirements of subpart F of part 228 as provided in 49 CFR 228.401 and the hours of service recordkeeping and reporting requirements of subpart B as provided in 49 CFR 228.413(d)(2).) There is a more extensive explanation of the general railroad system of transportation 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 subparts C and E. "Camp car" is, in § 228.5, 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. An office car, inspection car, specialized maintenance equipment, and 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 used to accommodate or house an employee or MOW worker is a camp car within the meaning of § 228.5. In addition, the phrase "railroad employees" in the existing definition of camp car is replaced with "an employee or MOW worker." The term "employee" is already defined in existing § 228.5 and means a train employee, signal employee, or dispatching service employee. The term "MOW worker" is defined as "an individual employed to inspect, install, construct, repair, or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and right of way of a railroad."

#### Subpart B of Part 228

#### Section 228.13 [Removed and Reserved]

FRA is removing and reserving § 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. ch. 211), (the authority for 49 CFR part 228, subparts C, E, and F). 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).

#### Section 228.6 Penalty

In addition, FRA is redesignating 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 is redesignating § 228.21, Civil penalty, and § 228.23, Criminal penalty, as § 228.6, Penalty.

#### Subpart C of Part 228

##### Heading of Subpart C

FRA is changing 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 amended subpart applies 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.

#### Section 228.101 Distance Requirement for Employee Sleeping Quarters; Definitions Used in This Subpart

In § 228.101, the heading is 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 paragraph (a) 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.

In addition, some typographical errors in paragraph (b) are corrected. Specifically, “Except as determined in accordance with the provisions of this subpart. ‘The immediate vicinity’” is replaced with “Except as determined in accordance with the provisions of this subpart, the ‘immediate vicinity’” instead.

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

In new § 228.102, FRA is restating 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 and camp cars 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 new § 228.102 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) as sleeping quarters solely 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. Section 228.102 notes that references to “employees” in the sections on procedures in §§ 228.103–228.107 must be read to include MOW workers.

#### Subpart E of Part 228

FRA is adding new subpart E entitled, “Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters.”

#### Section 228.301 Purpose and Scope

This 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 \* \* \*

Subpart E replaces the outdated guidelines at 49 CFR part 228, app. C consistent with RSIA’s requirements.

#### Section 228.303 Application and Responsibility for Compliance

This section defines the railroads that are covered by the new subpart. All railroads are 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. (*But see, e.g.*, 49 CFR part 228, subpart F, including § 228.401, and the Bridge Safety Standards at 49 CFR part 237). FRA lacks statutory jurisdiction over urban rapid transit operations not connected to the general system. *See* 49 U.S.C. 20102, 20103.

In addition, paragraph (b) explains that even though subpart E of part 228 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 against the railroad to ensure that the food service is safe and sanitary.

#### Section 228.305 Compliance Date

This 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. The compliance date for this rule is December 30, 2011.

#### Section 228.307 Definitions

This section defines key terms used in subpart E. 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 section sets forth a series of requirements for camp cars provided by a railroad as sleeping quarters to employees or MOW workers or both. 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) is based on FRA's longstanding interpretation of an 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 (68 °F) and a maximum temperature during hot weather (75 °F). Fourth, the section requires that camp cars provide an adequate means of egress in the event of an emergency situation. There must be at least two emergency exits. 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, except that illumination of emergency pathways is not required inside sleeping compartments.

### Section 228.311 Minimum Space Requirements, Beds, Storage, and Sanitary Facilities

This section requires that, to prevent overcrowding, the camp car's occupants have at least 80 square feet each; in a camp car where occupants cook, live, and sleep, a minimum of 120 square feet per occupant must be provided. The section also requires certain types of furniture. This section also creates a limit of four occupants per car.

### Section 228.313 Electrical System Requirements

This section sets forth requirements regarding the safety of all electrical systems in the camp car, including, but not limited to, heating, cooking,

ventilation, air conditioning, and water heating equipment. While the NPRM stated that these systems must be installed in accordance with all applicable provisions of the National Fire Protection Association's NFPA 70 (2008), "National Electrical Code" (NEC 2008), approved by the National Fire Protection Association (NFPA) Standards Council on July 26, 2007, with an effective date of August 15, 2007, FRA realizes that this code is not the only industry standard that could be used to ensure safe and working electrical equipment. To allow greater flexibility, FRA has decided to allow railroads to utilize industry-recognized standards other than those set forth in NEC 2008. These may include State-modified NEC Standards, other nationally-recognized standards, or internationally-recognized standards. FRA expects all electrical systems installed to be compliant with whichever industry-recognized standard the railroad utilizes.

This section of the 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; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and the American National Standards Institute.

### Section 228.315 Vermin Control

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

### Section 228.317 Toilets

This 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 section requires that there be at least one toilet room located within a camp car that has sleeping facilities for a total of one or two occupants. If the camp car has three or four occupants, then at least two toilet rooms are required. 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 the toilet room must be sufficient to assure privacy. Certain construction and cleanliness standards are also included in this section.

### Section 228.319 Lavatories

This section requires every camp car that provides a sleeping facility to have a basin with hot and cold potable running water, soap, and hand-drying equipment or towels. It also requires at least one basin per car with sleeping facilities.

### Section 228.321 Showering Facilities

The section mandates a minimum number of showers, construction requirements for the showers, and the provision of showering supplies.

### Section 228.323 Potable Water

This lengthy section sets forth requirements to ensure that the water provided to the occupants of camp cars is safe. Water uses such as personal oral hygiene, washing of the person, drinking as well as food washing, preparation, and cooking, and cleaning of the cooking utensils, cooking surfaces, and eating surfaces—all require the use of water that is potable. 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 need to be maintained.

To facilitate these objectives, FRA has established a series of requirements in this section. 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 40 CFR part 141, National Primary Drinking Water Regulations. A railroad must obtain a certificate indicating this fact. Section 228.323 does not require that the water as it flows from any faucet within the camp be certified as potable, but rather that the source of the water itself be potable. A railroad may obtain the certificate even before a camp reaches any given location to avoid interrupting operations. Of course the expected connection must be somewhat imminent: a railroad could not, for example, legally rely on a certification that is six months old. The certificate must be kept with the camp car for the duration of the connection, after which the certificate must be sent to a centralized location, such as the railroad's system headquarters. This location must be the depository for all water certification records for the railroad. Further, 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 to do so must be recorded. Those records must be kept within the camp for the duration of the connection and then sent to a centralized location. Certain procedures must be followed in response to 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 section prohibits the presence of food and beverages in toilet rooms and toxic material areas, imposes requirements applicable when a central dining operation is provided, and requires 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 section addresses the necessity of wastes being disposed to ensure a sanitary environment. Timely removal of all kinds of waste is mandated by § 228.329(a). Camp cars must be equipped with a method to dispose of sewage according to § 228.329(b). Appropriate waste containers for both general waste and food waste are required by § 228.329(c) and (d), respectively.

#### Section 228.329 Housekeeping

This 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. Railroads and camp car occupants share the obligation to keep the camp car facilities clean and in good care, meaning that railroads are responsible for the regular and thorough cleaning of all camp car facilities, and that camp car occupants should use good housekeeping practices. The section also requires elimination of splinters, unnecessary holes, and other conditions or features that impede cleaning.

#### Section 228.331 First Aid and Life Safety

This 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). 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 that railroads may consider providing include ammonia inhalants, aspirin, and a splint.

Each occupied sleeping room in a camp car must be equipped with a functional smoke alarm and carbon monoxide alarm or a combination device that incorporates both types of alarms, and there must be a functional fire extinguisher in each sleeping room of the camp car. The fire extinguisher must be "Type ABC," a classification put forth by National Fire Protection Association and widely used. In addition, each camp car consist must have an emergency preparedness plan prominently displayed.

#### Section 228.333 Remedial Action

As a reflection of FRA's enforcement policy, the section gives a limited amount of time for a railroad to take action after receiving specified notice 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.

#### 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, conforming changes are being made to appendix A to part 228, and appendix C to part 228 is being removed. Appendix A is revised (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 is eliminated and superseded by new 49 CFR part 228, subparts C and E. Appendix C is removed to reflect that the guidelines with respect to camp cars are being revised and converted into regulations at 49 CFR part 228, subparts

C and E, which become effective upon the compliance date.

### III. Regulatory Impact and Notices

#### A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures under Executive Orders 12866 and 13563 as well as DOT policies and procedures and determined to be non-significant. FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this final rule. 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, Notice No. 2.

To carry out a 2008 Congressional rulemaking mandate, FRA is creating a new Subpart E to title 49 Code of Federal Regulations (CFR) part 228. The new subpart prescribes minimum safety and health requirements for camp cars that railroads provide as sleeping quarters to train employees, signal employees, dispatching service employees, and individuals employed to maintain its right-of-way. The new regulation supplants existing guidelines that interpret previously enacted statutory requirements. The previous guidelines required railroad-provided camp cars to 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 congressional mandate, the regulations include the additional statutory requirements that camp cars provide indoor toilets, potable water, and other features to protect the health of such workers.

Under separate but related statutory authority, FRA is amending subpart C to 49 CFR part 228, Construction of Employee Sleeping Quarters. In accordance with the RSIA, FRA applies the location restrictions to include camp cars occupied exclusively for individuals employed to maintain the right-of-way.

Finally, FRA is making conforming changes to part 228, clarifying its provision on applicability, removing an existing provision on the preemptive effect of part 228 as unnecessary; and moving, without changing, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

FRA estimates costs and benefits for the final rule. In this case, only one railroad will be affected, NS. Since NS has already taken action to address the safety and health issues in an acceptable manner, this final rule will add only minimal costs. Some new requirements that will add costs are certification of the potable water source, lab tests when necessary, draining and flushing of the water system, and carbon monoxide detectors. As described in the regulatory evaluation, FRA estimates the annual costs of this rule will range between \$61,000 and \$80,000. The main benefit of this rule is the assurance that current safety and health levels of camp cars will be maintained in the future.

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

To ensure potential impacts of rules on small entities are properly considered, FRA developed this final rule in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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.

As discussed earlier, FRA has initiated this rulemaking as a requirement of the RSIA. FRA is promulgating new regulations in a new Subpart E to part 228, prescribing minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, dispatching service employees, and individuals employed to maintain its right-of-way. The new regulations supplant existing guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, 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

new regulations 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. In developing this final rule, FRA coordinated with the U.S. Department of Labor, as required by the congressional mandate.

Under separate but related statutory authority, FRA is amending subpart C to 49 CFR part 228, Construction of Employee Sleeping Quarters. This subpart contains FRA’s 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. Previously, these regulations affecting the location of sleeping quarters for covered service employees did not apply to sleeping quarters exclusively for individuals employed to maintain the right-of-way of a railroad. In particular, FRA is implementing 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 of a camp car that is occupied exclusively by individuals employed to maintain a railroad’s right-of-way will 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, the final rule makes conforming changes to Appendix A to part 228 and removes Appendix C to part 228. The rule also clarifies its provision on applicability, removes an existing provision on the preemptive effect of part 228 as unnecessary, and moves, without change, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule would not have a significant impact on a substantial number of small entities.

#### i. Description of Regulated Entities and Impacts

This rule applies to railroads that provide camp cars to employees or MOW workers as sleeping quarters, contractors and subcontractors of railroads. “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 \$7 million. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards 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.<sup>2</sup> 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.

This final rule does not affect any small entities.

#### Criteria for Substantial Number

There is only one railroad that will be affected by this regulation. It is a Class I railroad that is not a small entity. Consequently, this regulation does not burden a substantial number of small entities.

#### Criteria for Significant Economic Impacts

The factual basis for the certification that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities is that no railroads that are considered small entities will be affected by the regulation. This regulation does not

<sup>2</sup> See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR Part 209.

disproportionately place any small railroads that are small entities at a significant competitive disadvantage. There are no small railroads that house employees or MOW workers in camp cars.

**Outreach to Small Entities**

Outreach to small entities is not necessary since the final rule does not affect any small entities. FRA requested comments on this assumption in the NPRM and received none.

**ii. Certification**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the FRA Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

**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 final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions; it will not impose any direct compliance costs on State and local governments; and it will 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 rule will 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 rule may 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. ch. 211 (the Hours of Service Act). See Pub. L. 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 rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this 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 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 final 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
<b>228.323—Potable water</b>				
Water Hydrants (Inspections) .....	1 Railroad .....	740 inspections .....	3 minutes .....	37
Water Hydrants (Records) .....	1 Railroad .....	740 records .....	2 minutes .....	24.67
Inspection Records—Copy to Central Location .....	1 Railroad .....	740 record copies .....	10 seconds .....	2.06
Training—For Individuals to Fill Potable Water Systems ...	1 Railroad .....	37 trained employees .....	15 minutes .....	9.25
Training Materials/Records .....	1 Railroad .....	1 set of training materials ...	4 hours .....	4
Certification from State/local Health Authority .....	1 Railroad .....	666 certificates .....	1 hour .....	666
Certification by Laboratory .....	1 Railroad .....	74 certificates .....	20 minutes .....	24.67
Copy of Certificate when Connection Is Terminated .....	1 Railroad .....	740 certification copies .....	10 seconds .....	2.06
Draining, Flushing and Record .....	1 Railroad .....	111 records .....	30 minutes .....	55.5
Occupant Reports of Taste Problem .....	1 Railroad .....	10 taste reports .....	10 seconds .....	0.03
Draining/Flushing and Record, when Taste Report .....	1 Railroad .....	10 records .....	30 minutes .....	5
Lab Tests from Taste Report .....	1 Railroad .....	10 tests/certificates .....	20 minutes .....	3.33
Lab Report Copies .....	1 Railroad .....	10 lab copies .....	2 minutes .....	0.33
Signage (for non-potable Water) .....	1 Railroad .....	740 signs .....	2.5 minutes .....	30.83

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
<b>228.331—First aid and life safety</b>				
Master Emergency Plan .....	1 Railroad .....	1 master emergency plan ....	1.5 hours .....	1.5
Master Emergency Plan Copies .....	1 Railroad .....	292 copies .....	3 seconds .....	0.24
Emergency Plan (at each Location) .....	1 Railroad .....	740 modified plans .....	15 minutes .....	185
Emergency Plan Copies .....	1 Railroad .....	5,840 copies .....	3 seconds .....	4.87
<b>228.333—Remedial actions</b>				
Oral Report of Needed Repair .....	1 Railroad .....	30 oral reports .....	10 seconds .....	0.083
<b>Total</b>	<b>11,532 responses</b>	<b>1,056.42 hours</b>		

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 the following: 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 the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St. NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

OMB is required to make a decision concerning the collection of information requirements contained in this final 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.

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 \$100,000,000 or more (adjusted annually for inflation) 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. For the year 2010, this monetary amount of \$100,000,000 has been adjusted to \$140,800,000 to account for inflation. This final rule will not result in the expenditure of more than \$140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

*G. Environmental Assessment*

FRA has evaluated this 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 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 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 rule in accordance with Executive Order 13211. FRA has determined that this rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this rule 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 Final Rule**

For the reasons discussed in the preamble, FRA is amending 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 word "employee" from paragraph (b); and

■ b. Adding 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; and

\* \* \* \* \*

■ 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 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) Subparts B through E of this part do 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, except as provided in § 228.413(d)(2); or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) The application of subpart F of this part is set forth in § 228.401.

■ 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. An office car, inspection car, specialized maintenance equipment, or wreck train is not included.

\* \* \* \* \*

*MOW worker* means an individual employed to inspect, install, construct, repair, or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and 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) *Civil penalties.* 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 laws themselves (*e.g.*, requiring an employee to work excessive hours or beginning construction of sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under 49 U.S.C. 21303.

(b) *Criminal penalties.* 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 under title 18 of the U.S. Code, 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. Section 228.101 is amended by—  
 ■ a. Revising the section heading to read as set forth below; and  
 ■ b. In paragraph (b), by removing “Except as determined in accordance with the provisions of this subpart. ‘The immediate vicinity’” and inserting in its place, “Except as determined in accordance with the provisions of this subpart, the ‘immediate vicinity’.”

**§ 228.101 Distance requirement for 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) and (c)), the 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 through 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, beds, storage, and sanitary facilities.
- 228.313 Electrical system requirements.
- 228.315 Vermin control.
- 228.317 Toilets.
- 228.319 Lavatories.
- 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 Waste collection and disposal.
- 228.329 Housekeeping.
- 228.331 First aid and life safety.
- 228.333 Remedial action.
- 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 or MOW workers or both 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 or provides camp cars covered by this subpart, shall do so in accordance with this subpart.

**§ 228.305 Compliance date.**

On and after December 30, 2011, 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 are a 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 camp cars 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 at least two places in camp car for emergency exits.

(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, provided that where the pathway passes through a sleeping compartment, the pathway up to the compartment will be illuminated, but illumination is not required inside the sleeping compartment.

(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. A temperature of at least 68 degrees F. during cold weather and no greater than 75 degrees F. during hot weather must be maintained within an occupied camp car unless the equipment is individually controlled by its occupant(s).

(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, beds, storage, and sanitary facilities.**

(a) Each camp car used for sleeping purposes must contain at least 80 square feet of floor space for each occupant, with a maximum of four occupants per car. At least a 7-foot ceiling, measured at the entrance to the car, must be provided.

(b) A bed, cot, or bunk for each occupant and suitable lockable storage facility, such as a lockable wall locker, or space for a lockable foot locker for each occupant's 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 rail-mounted modular units, where the beds shall be spaced not closer than 30 inches, and highway trailer units, where the beds shall be spaced not closer than 26 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor. Multi-deck bunks, multi-deck bunk beds, and

multi-deck similar facilities may not be used.

(c) Unless otherwise provided by a collective bargaining agreement, clean linens must be provided to each occupant.

(d) In a camp car where occupants cook, live, and sleep, a minimum of 120 square feet of floor space per occupants must be provided. Sanitary facilities must be provided for storing and preparing food. *See also* § 228.325.

**§ 228.313 Electrical system requirements.**

(a) All heating, cooking, ventilation, air conditioning, and water heating equipment must be installed in accordance with an industry-recognized standard. Upon request by FRA, the railroad must identify the industry-recognized standard that it utilizes and establish its compliance with that standard.

(b) All electrical systems installed, including external electrical supply connections, must be compliant with an industry-recognized standard. Upon request by FRA, the railroad must identify the industry-recognized standard that it utilizes and establish its compliance with that standard.

(c) 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.* Each individual camp car that provides sleeping facilities must have one room with a functional toilet for a total of one or two occupants, and one additional room with a functional toilet if there are a total of three or four occupants.

(b) *Construction of toilet rooms.* Each toilet room must occupy a separate compartment with a door that latches and have 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 one functioning lavatory for a total of one or two occupants and an additional functional lavatory if there is a total of three or four occupants.

(b) *Water.* Each lavatory must be provided with hot and cold potable running water. The water supplied to a lavatory must be from a potable water source supplied through a system maintained as required in § 228.323.

(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.* Each individual camp car that provides sleeping facilities must contain a minimum of one shower for a total of one or two occupants and an additional functional shower if the camp car contains a total of three or four occupants.

(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 potable water must be provided for showering purposes. The water supplied to a shower must be from a potable water source supplied through a system maintained as required in § 228.323.

(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, washing of person, 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 not be provided as a substitute for the hot and cold running potable water required to be supplied in lavatories, showers, and sinks under this section. 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 40 CFR part 141, 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.

(j) 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.

(d) *Signage.* Any water outlet/faucet within the camp car facility that supplies water not from a potable source or that is from a potable source but supplied through a system that is not maintained as required in this section, the outlet/faucet must be labeled with a sign, visible to the user and bearing a message to the following effect: "The

water is not suitable for human consumption. Do not drink the water."

**§ 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 °F or below; the temperature of freezers shall be maintained at 0 °F 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.

(iii) All kitchen area camp car sinks used for food washing and preparation and all kitchen area floor drains shall be connected to a public sewer where available and practicable, unless the car is equipped with a holding tank that is emptied in a sanitary manner. For kitchen area sinks and floor drains identified in this paragraph (c)(4)(iii) connected to a holding tank, the tank must be constructed in a manner that prevents vermin from entry into the tank or odors from escaping into any camp car.

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

(5) When a 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.

(e) The limitations of paragraphs (c) and (d) of this section do not apply to food service from restaurants near the camp car consist that are subject to State law.

**§ 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 and life safety.

(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 x 4 inches);
- (2) Two large gauze pads (at least 8 x 10 inches);
- (3) Two adhesive bandages;
- (4) Two triangular bandages;
- (5) One package of gauge roller bandage that is at least 2 inches wide;
- (6) Wound cleaning agent, such as sealed moistened towelettes;
- (7) One pair of scissors;
- (8) One set of tweezers;
- (9) One roll of adhesive tape;
- (10) Two pairs of latex gloves; and
- (11) One resuscitation mask.

(c) Each sleeping room shall be equipped with the following:

- (1) A functional portable Type ABC fire extinguisher; and
- (2) Either a functional smoke alarm and a carbon monoxide alarm, or a functional combined smoke-carbon-monoxide alarm.

(d) Each camp car consist shall have an emergency preparedness plan prominently displayed so all occupants of the camp car consist can view it at their convenience. The plan shall address the following subjects for each location where the camp car consist is used to house railroad employees or MOW workers:

- (1) The means used to be aware of and notify all occupants of impending weather threats, including thunderstorms, tornados, hurricanes, floods, and other major weather-related risks;

(2) Shelter-in-place and emergency and evacuation instructions for each of the specific threats identified; and

(3) The address and telephone number of the nearest emergency medical facility and directions on how to get there from the camp car consist.

#### § 228.333 Remedial action.

A railroad shall, within 24 hours after receiving a good faith notice from a camp car occupant or an employee labor organization representing camp car occupants or notice from a Federal Railroad Administration inspector, including a certified State inspector under part 212 of this chapter, 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, but not limited to, water, cooling, heating, or eating facilities, sanitation issues related to food storage, food handling or sewage disposal, vermin or pest infestation, or electrical hazards, 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 as required by § 228.323 either—

(1) On paper forms provided by the railroad, or

(2) By electronic means that conform with the requirements of subpart D of this part.

(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 and Reserved]

■ 15. Appendix C to part 228 is removed and reserved.

Issued in Washington, DC, on October 24, 2011.

Joseph C. Szabo,  
Administrator.

[FR Doc. 2011-27818 Filed 10-28-11; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 100804324-1265-02]

RIN 0648-BB47

#### Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

**SUMMARY:** This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) November 1, 2011. Comments on this final rule must be received no later than November 30, 2011.

**ADDRESSES:** You may submit comments, identified by FDMS docket number NOAA-NMFS-2010-0194 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- *Fax:* (206) 526-6736, Attn: Gretchen Hanshew.

- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, Attn: Gretchen Hanshew.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain