

2000 (65 FR 19476). This statement is also available at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Division Chief, Vehicle and Roadside Operations Division (MC-PSV), Office of Bus and Truck Standards and Operations, phone (202) 366-4001, e-mail [MCPSV@dot.gov](mailto:MCPSV@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 21, 1974, the Environmental Protection Agency (EPA) issued final regulations establishing the Interstate Motor Carrier Noise Emission Standards for maximum external noise emissions of motor vehicles having a gross vehicle weight rating (GVWR) or a gross combination weight rating (GCWR) of more than 10,000 pounds that are operated by commercial motor carriers engaged in interstate commerce (39 FR 38208). These regulations were issued under the authority of section 18 of the Noise Control Act of 1972, which also directed the Secretary of Transportation to promulgate regulations to ensure compliance with the EPA standards.

On February 28, 1975, the Federal Highway Administration (FHWA) published in the **Federal Register** (40 FR 8658) a text of proposed regulations establishing measurement methodologies for determining whether commercial motor vehicles (CMV) conform to the Interstate Motor Carrier Noise Emission Standards published by the EPA at 40 CFR part 202. FHWA published final regulations on September 12, 1975 (40 FR 42432). The new requirements, found at 29 CFR 325.91, became effective on October 15, 1975.

The current requirements of § 325.91—unchanged since their adoption in 1975—were established to support enforcement of EPA's Interstate Motor Carrier Noise Emission Standards. While the corresponding section of the EPA regulation requires CMVs with a GVWR or GCWR of more than 10,000 pounds which are operated by interstate motor carriers to be “ \* \* \* equipped with a muffler or other noise dissipative device; \* \* \*”, the language adopted by FHWA in § 325.91 requires the same vehicles to be “ \* \* \* equipped with either a muffler or other noise dissipative device, such as a turbocharger (supercharger driven by exhaust gases) \* \* \*.”

It is not clear why the language that was adopted in § 325.91 is largely identical to that established by EPA except that it additionally considers a turbocharger to be a noise dissipative device under § 325.91(b). There is no

discussion in the preambles to either the February 1975 notice of proposed rulemaking or in the September 1975 final rule explaining why turbochargers were specifically included in the list of noise dissipative devices. In its petition, the Truck Manufacturers Association (TMA) noted:

At the time these regulations were written, many diesel engines were naturally aspirated, and coincidentally much louder than then-comparable turbocharged equipped engines/trucks. In that context, it made sense to include turbochargers with mufflers as acceptable noise dissipative devices, since both devices quieted trucks appreciably compared to trucks with naturally aspirated engines and totally unmuffled exhaust systems.

All newly manufactured trucks are currently equipped and certified to meet EPA's Transportation Equipment Noise Emission Controls requirement of 80 dB(A) (40 CFR part 205) when they are placed into initial service. Section 325.91 provides a simple inspection protocol to assist Federal and State safety inspectors in confirming compliance with the EPA exhaust system requirements of the Interstate Motor Carrier Noise Emission Standards (40 CFR 202.22).

While FMCSA believes that the vast majority of CMV operators currently comply with § 325.91, the TMA petition notes that the regulatory language of § 325.91, as currently written, conceivably permits vehicle operators to remove mufflers or other noise dissipative devices and still meet the Federal inspection requirements merely because the CMV engine is equipped with a turbocharger.

In its petition, TMA noted that

\* \* \* removing the muffler can cause the truck to be 10–20 dB(A) louder; a 10 to 100 fold increase in the emitted sound power level of the vehicle.

Additionally, TMA stated that it is \* \* \* not aware of any other credible, satisfactorily performing, and commercially available exhaust noise dissipative device other than mufflers.

**Petition for Rulemaking**

In its June 17, 2005 petition for rulemaking, TMA requested that the Federal Motor Carrier Safety Regulations (FMCSRs) be amended to eliminate turbochargers from the list of equipment considered to be noise dissipative devices. TMA proposes that the phrase “, such as a turbocharger (supercharger driven by exhaust gases)” be removed from 49 CFR 325.91(b).

**Request for Comments**

FMCSA requests public comment on TMA's petition for rulemaking to amend

49 CFR 325.91(b). Specifically, FMCSA requests that commenters indicate whether they believe the FMCSRs should be amended as requested by the petitioner and whether there is any data or other relevant information to suggest the need for such a change. FMCSA also requests information concerning the impact of the requested change on motor carriers' ability to achieve compliance with the requirements of section 325.91.

FMCSA will consider all comments received by close of business on October 25, 2006. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA will file comments received after the comment closing date in the public docket and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: September 8, 2006.

**John H. Hill,**  
Administrator.

[FR Doc. 06–8156 Filed 9–22–06; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**Docket No. [FRA–2000–7257; Notice No. 37]**

**Railroad Safety Advisory Committee (RSAC); Working Group Activity Update**

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

**ACTION:** Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

**SUMMARY:** The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

**FOR FURTHER INFORMATION CONTACT:** Patricia Butera or Lydia Leeds, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6212/6213 or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

**SUPPLEMENTARY INFORMATION:** This notice serves to update FRA's last announcement of working group activities and status reports of May 12,

2006, (71 FR 27781). The 29th full Committee meeting was held May 18, 2006.

Since its first meeting in April of 1996, the RSAC has accepted twenty-two tasks. Status for each of the tasks is provided below:

#### Open Tasks

*Task 96-4*—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. Contact: Grady Cothen, (202) 493-6302.

*Task 97-2*—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997.

(Sanitation) (Completed)

(Noise exposure) On June 27, 2003, the full RSAC gave consensus by ballot on the NPRM. The NPRM was published in the **Federal Register** on June 23, 2004. The comment period ended September 21, 2004. Task Force and Working Group meetings were held March 1, and March 2 and 3, 2005, respectively, to review the public comments and recommend a final rule. The Working Group reached agreement on all issues, and its report was presented to the full Committee on May 18, 2005. The final rule is in review and clearance.

(Cab Temperature) (Completed)

**Note:** Additional related topics such as vibration may be considered by the Working Group in the future. Contact: Jeffrey Horn, (202) 493-6283.

*Task 03-01*—Passenger Safety. This Task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held September 9-10, 2003, a consolidated list of issues was completed. At the second meeting held

November 6-7, 2003, four task groups were established: emergency preparedness; mechanical-general issues; mechanical-safety appliances; and track/vehicle interaction. The task groups met and reported on activities for Working Group consideration at the third meeting held May 11-12, 2004, and a fourth meeting was held October 26-27, 2004. The Working Group met on March 21-22, 2006, and tentatively agreed to establish a task force on General Passenger Safety. The Working Group met September 12-13, 2006, and activated the General Passenger Safety Task Force.

(Emergency Preparedness) At the Working Group meeting of March 9-10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency egress and rescue access. These recommendations were presented to and approved by the full Committee on May 18, 2005. The Working Group met on September 7-8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. An NPRM on Emergency Systems was published on August 24, 2006, and is open for comments until October 23, 2006.

(General Mechanical) Initial recommendations on mechanical issues (revisions to 49 CFR Part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of September 7-8, 2005, the task force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005, (70 FR 73070). Public comments were due by February 17, 2006. FRA is currently preparing a final rule.

(Passenger Equipment Crashworthiness) The Crashworthiness Task Force provided consensus recommendations on static end strength that were adopted by the Working Group on September 7-8, 2005. The full Committee accepted the recommendations on October 11, 2005. The FRA is preparing an NPRM.

(Vehicle/Track Interaction) The task force is developing proposed revisions to Parts 213 and 238 principally regarding high-speed passenger service. Contact: Charles Bielitz, (202) 493-6314.

*Task 05-01*—Review of Roadway Worker Protection issues. This Task was accepted on January 26, 2005, to review 49 CFR 214, Subpart C, Roadway Worker Protection, and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and

contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group has been established and will report to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12-14, 2005. The Working Group will report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion. The Working Group met on June 22-24, 2005, August 8-11, 2005, September 20-22, 2005, November 8-9, 2005, January 10-11, 2006, February 1-2, 2006, March 15-16, 2006, April 11-12, 2006, and August 22-23, 2006. To date, the group has drafted and accepted regulatory language for various revisions, clarifications, and additions to 16 sections of the rule. The next Working Group meeting is being planned for November, 2006. A meeting is scheduled for January 17-18, 2007, with the final meeting scheduled for February 27-28, 2007. Contact: Christopher Schulte, (202) 493-6251.

*Task 05-02*—Reduce Human Factor-Caused Train Accident/Incidents. This Task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. A Working Group was established. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The Working Group met on July 12-13, 2005, August 31-September 1, 2005, September 28-29, 2005, October 25-26, 2005, November 16-17, 2005, and December 6-7, 2005. The final Working Group meeting devoted to developing a proposed rule was held February 8-9, 2006. The Working Group was not able to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's forthcoming NPRM, which is under development with the Working Group's discussion draft as its basis. Contact: Douglas Taylor, (202) 493-6255.

*Task 06-01*—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review Title 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A Working Group has been established. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress

toward completion. The first Working Group meeting was held May 8–10, 2006. The Working Group met on August 8–9, 2006, and the next meeting is scheduled for September 25–26, 2006. Contact: George Scerbo, (202) 493–6249.

**Task 06–02—Track Safety Standards and Continuous Welded Rail.** Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. No. 109–59, “SAFETEA-LU”), the 2005 surface transportation authorization act, requires FRA to issue requirements for inspection of joint bars in continuous welded rail (CWR) to detect cracks that could affect the integrity of the track structure. 49 U.S.C. 20142(e). FRA published an Interim Final Rule establishing new requirements for inspections on November 2, 2005, (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but the conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA is reviewing the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR related to provisions of the Track Safety Standards, with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures, in track using CWR. A Working Group has been established. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held April 3–4, 2006, at which time the Working Group reviewed comments on the IFR. The second Working Group meeting was held April 26–28, 2006. The Working Group also met May 24–25, 2006, and July 19–20, 2006. The Working Group reported consensus recommendations for the final rule that were accepted by the full Committee by mail ballot on August 11, 2006. FRA is currently preparing a final rule. Contact: Ken Rusk, (202) 493–6236.

#### Completed Tasks

**Task 96–1—(Completed)** Revising the Freight Power Brake Regulations.

**Task 96–2—(Completed)** Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

**Task 96–3—(Completed)** Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

**Task 96–5—(Completed)** Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

**Task 96–6—(Completed)** Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

**Task 96–7—(Completed)** Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

**Task 96–8—(Completed)** This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions.

**Task 97–1—(Completed)** Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

**Task 97–3—(Completed)** Developing event recorder data survivability standards.

**Task 97–4 and Task 97–5—(Completed)** Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

**Task 97–6—(Completed)** Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

**Task 97–7—(Completed)** Determining damages qualifying an event as a reportable train accident.

**Task 00–1—(Completed—task withdrawn)** Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices (Blue Signal Protection).

**Task 01–1—(Completed)** Developing conformity of FRA’s regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports (Reporting Guide).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on September 18, 2006.

**Grady C. Cothen, Jr.**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 06–8124 Filed 9–22–06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Ex Parte No. 664]

### Methodology To Be Employed in Determining the Railroad Industry’s Cost of Capital

**AGENCY:** Surface Transportation Board.

**ACTION:** Request for comments.

**SUMMARY:** The Board is seeking comments on the appropriate methodology to be employed in determining the railroad industry’s estimated cost of capital to be used in future annual cost-of-capital determinations. We are also soliciting comments on how evidence should be submitted and analyzed in future cost-of-capital proceedings.

**DATES:** Comments are due on or before November 6, 2006.

**ADDRESSES:** Send comments (an original and 10 copies) referring to STB Ex Parte No. 664 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Paul Aguiar, (202) 565–1527. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Section 205 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) first codified the requirement for the Board or its predecessor to establish and maintain standards for railroad revenue adequacy. This provision stated that railroad revenues should provide a flow of net income plus depreciation adequate to support prudent capital outlays, assure the repayment of a reasonable level of debt, permit the raising of needed equity capital, cover the effects of inflation, and attract and retain capital in amounts adequate to provide a sound transportation system in the United States. Subsequent laws (including the ICC Termination Act of 1995) have retained this requirement. Thus, each year the Board makes a determination of which railroads are or are not revenue adequate.

The annual determination of the railroad industry’s cost of capital is used in evaluating the adequacy of railroad